



# Environmental Pillar Submission to the EPA Review Panel

**May 2010**



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**Whilst this document was developed through the processes of the Environmental Pillar it does not necessarily represent the policies of all its members.**

# 1 Summary

The Environmental Pillar was included as the fifth pillar of national Social Partnership in April 2009, and is made up of some 27 national environmental NGOs acting together as one social partner alongside the Trade Unions, the Employers, the Farmers and the Community and Voluntary Pillars

In approaching this very important consultative process, the Environmental Pillar began its analysis by focusing on the job description implicit in the title of the Agency – i.e. ‘Environmental Protection Agency’. There is a basic expectation set for the Agency’s focus and responsibility consequent on that job title, namely to be a protector of the environment – and it is on that job requirement that our focus has been directed. This central focus on the environment is essential and it would be the Pillar view that the Agency should view the environment as its customer. The lack of such a perspective within the current EPA is one of the first signals of disconnect evident in living up to the demands of the agency’s title.

The breadth of terms of reference of the review panel was welcomed by the Pillar. Such breadth is seen to be essential to any meaningful assessment and reform necessary to the fundamental matter at stake which is as already stated is: ‘the protection of the environment’ and how that has been served and how it needs to be served in the future.

Our internal consultation therefore focused on a series of gap analyses

- **1. Understand the job requirement.**
  - To do this we looked at the gap between the ‘current situation and future requirements’ for environmental governance by asking:
    - What constitutes the Environmental Governance System in Ireland?
    - How well does it function and service environmental protection?
    - What needs to change?
    - What is needed to make it function more effectively?
- **2. Assess ‘the candidate’**
  - To do this we examined the EPA’s “performance to date and its remit and expectations” by asking:
    - How well does the EPA perform against its current remit?
    - How does the EPA interact and engage to support the effective operation of the environmental governance system?

- Could the EPA do the job – given its performance to date, the nature of the job to be done, and the likelihood of it being sufficiently empowered?

The findings of our analysis are briefly overviewed below.

In reviewing the requirements of 'the job' - we turned our focus to considering what exactly that meant in an Irish context, given the different layers and players who influence and impact the environment in one way or another either through policies or actions etc. and who would need to be effectively marshalled by this 'Protector of the Environment'.

This highlighted the multiplicity of interfaces and the perceived conflicts of interest and underlying issues with foundational elements such as the environmental legislative framework. It provided great clarity not only into the breadth of the operation needed to address environmental governance in Ireland, but of the incredible level of influence that would be needed to engage and marshal all these layers and players to the beat of a protector's drum.

In assessing 'the candidate' - we evaluated the EPA first in terms of its existing remit, and addressed detailed questions posed by the consultation document across a range of matters.

While the EPA's performance in certain areas was positively perceived, significant issues were noted with a number of aspects of the agency's performance.

However it was clearly acknowledged that in many of these instances other matters outside the agency's control contributed to its poor performance. Nonetheless fundamental issues with the performance and focus and culture of the EPA also had to be acknowledged – including the complete lack of appreciation by the agency that the environment is its customer or primary stakeholder.

With reference to the EPA itself – it appears to exist and operate in a sort of limbo in terms of its brief. To some extent its focus appears to be based on its original legislative remit as a licensing and permit agency – which licenses pollution. In other areas it seems to aspire to the greater challenge and brief implicit in its title, but ultimately falls short and disappoints on expectations both in terms of delivery even on specified remit and delivery on the bigger picture.

So in reviewing the gap analysis between the job which needs to be done, namely 'to protect the environment' and the job being done by the agency – we then evaluated the EPA's ability to close this gap, and our confidence in its ability to do so, by considering our evaluation of the EPA's performance of what it is doing currently and the challenges it would need to overcome both internally and externally. Our conclusions were that

- The EPA in Ireland is not configured to be a protector of the environment
- The EPA does not have our confidence in rising to the necessary challenges

- We question the political will to empower the agency sufficiently and insulate it against political interference and the ability to maintain that over successive administrations
- Oversight of the agency is essential

We therefore made the fundamental determination that we could not put all our eggs in one basket and simply list out all our recommendations for improvement and recommend the EPA be mandated to do the job. This was not only because of underlying confidence issues, but ultimately because of the minefield that environmental governance in Ireland is. It was also in recognition of the practical challenge there would be to creating an agency sufficiently powerful to dictate to government and government departments and agencies, and insulate it effectively from political backlash, while at the same time making sure it could be held accountable.

We therefore decided to make twelve overarching recommendations to provide for a range of complimentary solutions, to provide for a level of environmental governance through the EPA, but with oversight of the agency, and independent recourse on environmental matters, and to address a range of complimentary initiatives fundamental to the reform of environmental protection in Ireland.

The overarching recommendations are:

- I. Enhance or augment the Office of the Ombudsman to provide for an Environmental Ombudsman.
- II. Clarify the role required of the EPA and revisit its legislative remit
- III. Configure and implement an essential complimentary programme of legislative reform.
- IV. Integrate the relevant decision making frameworks of An Bord Pleanála & the EPA under An Bord Pleanála to allow environmental aspects of decisions to be dealt with as part of the planning process.
- V. Provide a structure to conduct a substantive review of licensing and other significant decisions
- VI. Provide for an Environmental List within the Court System and associated reform of penalty provisions for environmental crimes and damage.
- VII. Widen the remit of the Enforcement Wing of the Agency and improve its function through the creation of an Environmental Crime Investigation Unit.
- VIII. Clarify and optimise the relative responsibilities of the NPWS and the EPA for biodiversity considerations.
- IX. Specify additional licensing functions for the EPA
- X. Improved leverage of environmental monitoring & assessment information in assessing and feeding into National Strategies and Plans in order to:

- a. Improve engagement of and by the public in the stewardship of the environment
  - b. Create a real appreciation of the alignment of interests between human health and environmental factors and thereby influence behaviour and choices to create positive environmental outcomes.
- XI. Generate greater leverage of the public at large in compliance and monitoring and response to environmental matters
- XII. Maintain the Review Panel as a steering group for the implementation of the Review Panel's approved recommendations

These recommendations are intended to create a more fertile basis on which a wide range of our further recommendations can be progressed, which are consequent on the very specific probing prompted by the Consultation Document produced to assist the consultation activity.

The invitation to consult was accompanied by a document "Review of the Environmental Protection Agency Consultation Document April 2010", which posed a number of questions to us. This resulted in a wide range of findings and conclusions and corresponding recommendations which are detailed in this submission, along with a more detailed overview of the governance analysis as outlined above. Nominees from the 27 member organisations of the Environmental Pillar engaged in online debate, one to one telephone interviews and two half-day workshops. The outcome is presented here as the opening stage of a consultation process in which the Pillar proposes to engage with the EPA Review Panel. This will be to expand on and develop the findings and recommendations contained herein, on a matter of critical importance to the nation and indeed to deliver on our wider international responsibilities as a caretaker of Ireland's unique environmental heritage, the health of that environment and the transboundary climatic implications of our environmental and behavioural choices.

Contact information:

For further details please contact Michael Ewing, Social Partnership Coordinator.

Postal Address: Environmental Pillar of Social Partnership. Tullyval, Knockvicar, Boyle, Co Roscommon

Telephone: 071 9667373

Mobile: 00353 (0)86 8672153

Email: michael@environmentalpillar.ie

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# **Part A**

## **Section 2**

### **Introduction**

## 2 Introduction

### 2.1 Context for submission

The following submission is made on behalf of The Environmental Pillar in response to the 'Invitation to Comment' advertised as part of the consultation activity for a review of Ireland's Environmental Protection Agency, EPA; as issued by the Department of The Environment, Heritage and Local Government, DOEHLG.

It is the understanding of the Pillar that this submission does not constitute the entirety of the Consultation – and that there will be further opportunities to engage with the EPA Review Panel that was established by the Minister for The Environment, Heritage and Local Government, DOEHLG. Mr John Gormley TD. These further engagements will provide a necessary opportunity to:

- Clarify and substantiate our commentary
- Refine our recommendations to the Review Panel
- Facilitate engagement in the formulation of final recommendations on matters of such critical import to the future health of our environment, and the truly sustainable development of our society and economy.

### 2.2 Introduction to the Environmental Pillar

The Environmental Pillar was included as the fifth pillar of national Social Partnership in April 2009, and is made up of the 27<sup>1</sup> national environmental NGOs, acting together as one social partner alongside the Trade Unions, the Employers, the Farmers and the Community and Voluntary Pillars. Although the national arrangements of Social Partnership are in some disarray at present, the Environmental Pillar is actively working with the other social partners and with government at the national and local levels to

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<sup>1</sup> An Taisce, BirdWatch Ireland, Coastwatch, FEASTA, GRIAN, Irish Doctors' Environmental Association (IDEA), Irish Wildlife Trust (IWT), Sonairte, VOICE, Bat Conservation Ireland, CELT (Centre for Environmental Living and Training), Coast Watch, Coomhola Salmon Trust, Crann, ECO-UNESCO, Forest Friends, Gluaiseacht, Hedge Laying Association of Ireland, Irish Natural Forestry Foundation, Irish Peatland Conservation Council, Irish Seal Sanctuary, Irish Seed Savers Association, Irish Whale & Dolphin Group, Just Forests, Sustainable Ireland Cooperative (Cultivate), The Organic Centre, Zero Waste Alliance

promote the protection and enhancement of the environment. The primary message of the Pillar is that:

The continuing success of human society and social systems depends fundamentally on the preservation of the overall productivity, health, and long term sustainability of the ecosystems and environmental services that underpin and supply many of the most basic components of human welfare such as healthy soils, clean water, and clean air.

## 2.3 Acknowledgements

The Environmental Pillar would firstly like to offer our deep thanks to Attracta Uí Bhroin, who on request, and in a voluntary capacity, assisted with the enormous job of carrying out the internal Pillar consultation, collating the large volume of input, and writing this submission all in the space of less than 3 weeks.

The Pillar would also like to thank the following NGOs outside of the Pillar that contributed to this document, notably: SWAN; The Golden Eagle Trust; and Cork Environmental Forum.

The proactive engagement of the Pillar members in this process, involving many hours of unpaid work, often outside of office hours should be acknowledged.

Finally the Pillar would also like to thank Comhar, the national Sustainable Development Council for contributing to the financial cost of the workshops conducted as part of our internal consultation process



## 2.4 Submission Structure

A consultation document: "*Review of the Environmental Protection Agency Consultation Document April 2010*" was circulated by the DOEHLG to support the consultation activity. In that document a number of specific topics for discussion were outlined and a number of specific questions were posed. The questions in that consultation document focus to a greater extent on issues particular to the mandate, operation, performance and governance of the EPA itself to date. They also look to future requirements for the EPA in terms of:

- Areas for improvement, and
- The need to respond to further challenges.

The Consultation Document also seeks to explore the wider implications and health of environmental governance in Ireland, as per the terms of reference of the Review Panel, namely:

*vi) To re-assess the ongoing relationship between the EPA and other parts of the environmental governance structure in Ireland, having regard to the environmental challenges facing Ireland and developments in society*

Our submission has endeavoured to respond to the matter raised in the consultation document, and reflect its structure in the main. Our response has therefore been structured into four parts as follows:

- **Part A** – The Introduction, covered in Section 2.
- **Part B** – Addressing the Fundamental Requirement: Protecting the Environment, covered in Section 3.0. This section:
  - Briefly addresses the wider issue of environmental governance in Ireland, and also some of the specific matters raised in the consultation document relating to the EPA's Structure & Governance
  - Presents 'Twelve Overarching Recommendations'. These are seen as essential and fundamental requirements.

- **Part C** – “Other Findings, Conclusions & Responses”. Covered in sections 4 to 11
  - This section addresses the remaining topics detailed in the Consultation Document, and the associated questions posed.
  - Each topic is therefore divided into two sections namely:
    - 'Findings', and
    - 'Consultation Queries: Responses and Conclusions'.
  - The findings have been included to provide overall context for the responses to the questions or queries posed in the consultation document, and for some transparency for the statements detailed under the heading of 'Conclusions'.
  - The topics included here from the Consultation Document are:
    - Legislative Framework
    - Licensing and Permits
    - Compliance
    - Stakeholder Relationships
    - Environmental Monitoring and Research
    - Assessment
    - Information Provision
    - Resourcing to Meet Environmental Challenges in a time of Economic Crisis, and Resourcing for current and future obligations
  - The considerations raised under the other headings of the Consultation Document of 'Best Practice' and 'Cross-Cutting Principles', 'Structure & Governance' and topics pertaining to 'Resourcing' - are addressed throughout the other sections and through our recommendations. This is due in part to time constraints, but also because of how these matters arose in the context of discussions on other topics.
  
- **Part D** – Further Recommendations. Covered in Section 12
  - This section includes a number of other recommendations – based on both our findings and the issues highlighted by the questions and challenges raised in the Consultation Document.
  - These recommendations are in addition to the 12 overarching recommendations.

- Again these recommendations are not all necessarily addressed to the EPA, but are seen as complimentary and important to the effective functioning of 'environmental protection' in Ireland.

## **Part B**

### **Section 3**

### **“Addressing the fundamental Requirement: Protecting the Environment”**

## 3 Addressing the fundamental requirement: Protecting the Environment

### 3.1 Section Overview:

This section basically outlines our analysis of the overall Environmental Governance System in Ireland in sub-section: 3.2 Problem Analysis; with a view to positioning our 12 overarching recommendations in sub-section: 3.3., Overarching Recommendations.

### 3.2 Problem Analysis:

As outlined in the introductory section earlier, the Pillar was mindful of the Review Panel's terms of reference, specifically item (vi) which is:

*"To re-assess the ongoing relationship between the EPA and other parts of the environmental governance structure in Ireland, having regard to the environmental challenges facing Ireland and developments in society."*

This charges the Review Panel with the responsibility, and indeed the power, to consider the matter of 'Environmental Governance' more widely. In so doing it is also charged with considering the broader and more substantive matter from our perspective, namely 'the protection of the environment'; and how that is served both now and in the future.

The broadness of such a focus we believe is fundamental to the effectiveness of this review and is welcomed as essential, for the following reasons. It will become evident later in this document when specific topics such as Licensing and Enforcement for example are addressed; that significant issues were noted with the performance of the EPA to date in delivering on its mission and its remit. But it is important to state from the outset 'the blame' or rationale for these failings in a number of instances was not attributed solely to the EPA itself, but frequently is viewed as consequent on, or contributed to, by other external factors such as:

- The underlying legislative remit for the agency
- Deficiencies in the overall legislative context
- Need for greater understanding and focus of environmental matters in the judiciary

- External political pressures
- Economic and sectoral influence
- Lack of integrated engagement across multiple government agencies and departments on environmental matters
- Conflicting priorities from Government agencies and departments when it comes to dealing with the resulting pressures on the environment of their policies. For example environmental pressures resultant from Agriculture or Energy policies which perceive environmental protection as secondary to their primary sectoral interests
- Potential lack of resources internally within the EPA compromising its functioning
- Lack of resources within agencies who need to feed into or support the EPA in executing its functions, and thereby compromise it
- Lack of oversight of the environmental governance system in general, and of the EPA specifically.

It would be our contention therefore that there is:

- Significant dysfunction in the overall governance system for environmental protection in Ireland,
- A number of serious integration issues with the environmental governance system and
- A lack of underlying infrastructural support across a number of different dimensions of the governance system.

These issues lead to a less than optimal framework to 'protect the environment' in the first instance; and in the second instance- to adequately support those charged with protecting it - such as The EPA, among others. In summary the matter of 'Environmental Protection in Ireland' cannot be solved or addressed by looking at the EPA alone. That is therefore why we welcome the broadness of the terms of reference, and why the twelve recommendations detailed later in this section are in the main addressed to the wider framework or system.

Notwithstanding the acknowledgement that the EPA cannot be held responsible alone for the deficiencies and issues with the protection of the environment in Ireland; the concerns expressed by member organisations of the Pillar with the performance of the EPA also have to be considered. This is particularly with a view to informing and targeting recommendations appropriately, and in considering the future role of the EPA in a reformed governance system.

It may be useful at this point to set some context for the underlying perceptions within the Pillar of the EPA, and the assessment of the EPA's performance against its mission. The following findings and comments are indicative of such views:

- The EPA does not act as a proactive environmental protector or champion.
- The legislation underlying the function and remit of the EPA is not seen as that of a 'proactive environmental protection agency'.
- The EPA is not seen as an effective or empowered agent in transforming views on the environment.
- The EPA is not seen as an effective 'agent of change' in creating the necessary levels of engagement across multiple stakeholders in a joint mission to protect the environment as our most significant resource.
- There is a fundamental mismatch between the agency's title and that of its remit and performance.
- Economic or sectoral interests and political influence too frequently outweigh environmental considerations, and in the balance of factors asserted in its mission statement.
- The absence of a 'Public Interest Remit' is a significant and unacceptable omission for an agency charged with the title of Environment Protection Agency.
- The Agency is seen as technocratic and bureaucratic.
- The information and research performance of the EPA was seen as having improved, providing much positive benefit. However there are particular areas where further improvement is desirable.
- Biodiversity is the 'poor relation' in the delivery of the EPA's remit across the following functions: Licensing, Compliance, Research, and Information. Biodiversity does not figure adequately in terms of the Agency's stakeholder perspectives.
- There are concerns that the Agency is not resourced adequately to be able deliver effectively on its functions.
- The EPA's performance of its licensing and enforcement functions is not satisfactory.
- The EPA is not effective in engaging the wider public in the stewardship of the environment.

The basis for and rationale for such views is looked at in greater detail in subsequent sections, however at this point we merely wish to establish the extent of issues perceived with the EPA.

These two fundamental issues, namely:

- The extent of issue with the overall Environmental Governance system or framework in Ireland
- The extent of issue with the EPA itself

presented us with a dilemma in finding an appropriate and 'safe' place to direct our recommendations or 'change-requirements' to.

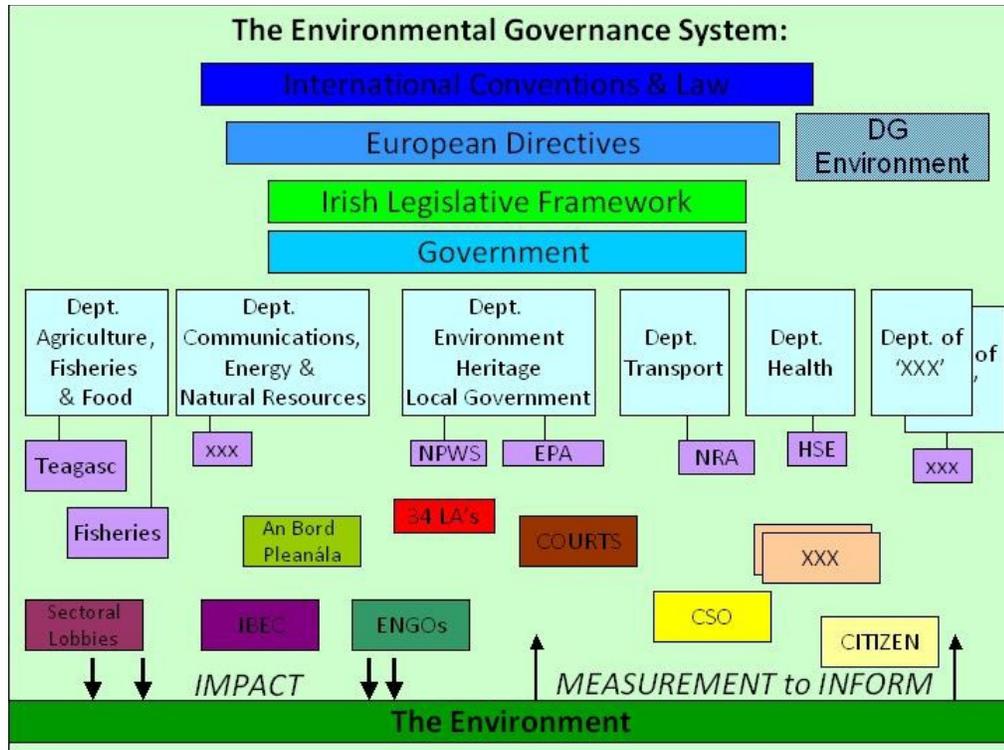
What we wish to achieve fundamentally are improved environmental outcomes. To achieve this the underlying governance framework needs to be improved, not just the EPA. Even the most cursory 'Delivery-Risk Assessment' for many of the improved environmental outcomes which we sought to achieve through our recommendations - could be seen to have little chance of succeeding; or having the required impact; without extensive complimentary and co-ordinated reform across multiple areas. The ongoing oversight of such reforms and performance on protecting the environment in general was also seen as being critical.

This prompted us to take a step back and examine the overall Environmental Governance System to see how such co-ordination could be achieved, and where such intervention could be positioned and configured

In brief we consider **what is needed is something which can actually stimulate, deliver and oversee a series of complimentary reforms in the governance framework, to:**

- Support the 'proper' functioning of the EPA.
- Facilitate better integration and support in the overall system to deliver on environmental protection.
- Provide some recourse to those who were not satisfied or who had issue with delivery of environmental protection in Ireland.

We therefore considered the following indicative perspective of the 'Environmental Governance System'.



It is by no means a complete representation. But it serves as an indicative representation of the multiple players and layers be they sectoral lobbies, agencies or departments, judicial systems etc. in the system.

A review of this system-view highlighted for us:

- The complex level of interaction across multiple dimensions required to really take on board and deliver on the requirements for environmental compliance and environmental protection.
- The extent of vulnerabilities to the effective operation of environmental governance that exist; especially when one views how all these lines of interaction are topped off with numerous sources of conflicting interest and priorities.
- The effect of 'breakages' within the system in key areas such as underlying legislation – which can be seen to effectively paralyze and perpetuate dysfunction throughout the system; and completely compromise its ability to move forward or deliver on its desired objectives.

So, having identified the scale of the problem, the question then becomes: How do you fix it and what sort of structure(s) could:

- Require and trigger the necessary legislative reform programmes?

- Be given a sufficiently powerful remit to direct multiple Government departments and agencies to revise policies and focus?
- Identify and drive co-ordinated changes to deliver on specific improvements across multiple layers and players?
- Be insulated against future changes in political priorities?

A number of possible suggestions and configurations were considered to respond to these requirements – albeit very briefly given the time constraints. However the emerging preferred proposal was ‘not to put all our eggs in one basket’ in addressing recommendations for the overall governance framework; and to accompany specific proposals core to governance with a number of other critical recommendations which will provide at least a ‘more fertile ground or framework’ on which a wide range of our further recommendations can prosper and be directed accordingly. This has given rise to some twelve fundamental or overarching recommendations, which are detailed below. We would stress once again that these recommendations need to be managed as an orchestrated response and cannot just be looked at in isolation. A further set of additional and more granular recommendations, which we have had less time to outline, are also documented later in Part D of this submission.

### 3.3 Overarching Recommendations

The twelve overarching recommendations below are intended to address overall governance issues, and some fundamental corrections or adjustments needed in the system for environmental governance in Ireland - as per the findings in the previous section.

We would like to explore further with the Review Panel the contribution envisaged by these recommendations, or something analogous to them; and the detailed specification and functioning of the recommendations.

The granularity and focus of the recommendations vary. For example:

- In some instances a recommendation may be for a complimentary initiative which lies outside the domain of the EPA. For example legislative reform.
- In other instances a recommendation may be specifically targeted on the functioning of the EPA. For example the creation of an Environmental Crime Investigative Unit.
- In other instances a recommendation may be for more general environmental governance which encompasses the EPA, but is not limited to it. For example in the recommendations pertaining to oversight and complaints.

## 1. Enhance or augment the Office of the Ombudsman to provide for an Environmental Ombudsman.

The intent of such a proposal would be to:

- Provide for recourse for complaints on the full range of environmental matters, at all levels of granularity from the individual right through to the State; and across the full range of sectors, agencies and Government Departments and Ministries etc.
- Act as an objective commentator on environmental matters.
- Act as an effective champion for the environment.
- Provide for a driver on the transposition of conventions and directives into national law where environmental considerations are at stake.
- Act as an agent of change across all levels of the Environmental Governance System, EGS; by dealing with complaints and identifying what went wrong and why. Such an analysis would **not** be limited. It would cross multiple-departments, agencies or sectors, and thereby resolve some of the poor-integration issues which pertain in the EGS.
- Provide for securing redress on environmental matters.
- Provide oversight to the performance of the EPA, with less risk of that being subject to sectoral or political influence – and in so doing empower the EPA to be more autonomous and effective.
- Provide protection for the EPA against ‘political backlash’.
- Provide recourse while other essential improvements to the environmental governance framework are being developed.

The absence of an Environmental Ombudsman in the first instance is something which should be addressed. The ombudsman service exists to deal with a number of other areas, and it is only appropriate that the environment be serviced also. The requirement for such a service is all the more necessary given the number and extent of issues, which pertain to the matter of environmental protection in Ireland.

It will be important to secure a natural champion for such a role with a proven track record of protecting the environment, capability in their own area of expertise; and impeccable credentials in impartiality and fairness.

The negative experience of the Equality Commission, which was effectively emasculated following its challenge to Government policy, is a cautionary reminder of the challenges to configuring such champions and bodies appropriately, and to their ability to operate effectively. However in the context of the existing frameworks, the ombudsman model was seen as the best model to build on.

Additionally, the implementation of such a body will be viewed as an incredibly positive commitment from Government – not only by the ENGO sector, but also by Europe. Such an initiative should be presented to the European Commission as a key linchpin in any future roadmap to correcting Ireland’s poor compliance record; and particularly in delivering on our obligations under the Aarhus convention.

## **2. The role required of the EPA as it stands needs to be clarified, and its legislative remit revisited.**

Any proposals for the re-configuration of the EPA need to take into account a number of considerations including:

- Ireland’s need for structures charged with environmental protection and also with a public interest remit.
- The outcome of decisions made in relation to the creation and remit of an environmental ombudsman.
- A reality-check based on the powers and autonomy the Government is prepared to grant the agency.
- How oversight of such an agency's performance in creating positive environmental outcomes is best achieved.
- Recognition of the lack of confidence expressed by many ENGOs in the performance to date of the EPA, together with other process, cultural and leadership concerns.

It is unfair for the Agency to be charged with expectations and responsibility for the environment’s protection in the eyes of the public at large, the ENGO sector and others - if it is not so mandated by legislation, and empowered and resourced appropriately. At the same time, the Agency does not have the confidence of many of the groups within the ENGO sector: in terms of its past performance, processes, culture, and leadership. Therefore it is not simply a case of: expanding its mission statement, tweaking its legislation, and trusting all will go well!

It would be worth discussing further the associated requirements to deliver on a mission statement which would be expanded to provide for the following concepts (all of which the Pillar would view as important elements for the Agency's mission statement):

- Being a proactive champion for the environment
- Providing leadership in creating an environmental ethic and in protecting the environment as our most important resource, and
- Recognising and addressing the international dimension to our environmental responsibilities

- In exercising both an environmental and public interest remit; facilitate an integrated approach across all government agencies and policy in protecting the environment

Again in considering the understandable desire for an environmental champion and improved focus for the EPA on environmental protection; we caveat such proposals with the underlying concern that we need to be sure we are looking for these functions in the right quarter. We also would be concerned that in creating the necessary autonomy for such an agency we are very cognisant of the consequential danger of investing too much power into, or expectation of, any one agency. This emphasises the importance of our complimentary recommendations around oversight through an environmental ombudsman's office.

### **3. Configure and implement an essential complimentary programme of legislative reform.**

There are numerous critical legislative initiatives needed to:

- Support environmental protection
- Address compliance requirements
- Reduce Ireland's liability to penalties for non-compliance

In drafting new legislation we should seek to be innovative in our approaches. This is with a view to reducing the risk of environmental damage in the first instance by seeking ways to incentivise developments and operators to reduce their negative environmental footprint, for example by linking their outputs to their input requirements

There is a need to expedite identification of the major legislative areas which need to be addressed from an environmental perspective. Therefore input should be leveraged from ENGO's in Regulatory Impact Analysis, and joined with the practical experience of civil servants in the various departments, to arrive at high-level proposals for legislative change.

These proposals should be then prioritised in terms of the positive impact the proposed changes would have on environmental outcomes.

The subsequent detailed specification and drafting of legislation would need to be accompanied by an overall Implementation Programme. This 'Legislative Reform Implementation Programme' would need to:

- Create and deliver associated guidelines and training on the implications of the legislation among key target audiences, in order to support the effective uptake/implementation of the legislative reforms

- Detail key measurement indicators to assess:
  - The success of the legislative reforms in delivering on improved environmental outcomes, and
  - The ability of the system users to understand and employ and respond to this new legislation.
- Provide for adjustment and improvement mechanisms where satisfactory results from the legislative reforms are not being obtained.

In Part C of this submission, the subsection which looks at Legislative Context in more detail identifies some of the legislation which should be addressed in the context of this overarching recommendation. But again, clearly, this is an area which requires further discussion and elaboration.

#### **4. Integrate the decision making frameworks of An Bord Pleanála & the EPA under An Bord Pleanála**

The multiple problems and compliance issues that arise consequent on the split-decision framework across these the two agencies of the EPA and An Bord Pleanála need to be addressed.

An Bord Pleanála, in adjudicating on planning appeals and on Strategic Infrastructure Cases, has demonstrated the ability to bring in and integrate specialist expertise to assist it in addressing particularly complex areas or specialized areas of an application which is before it for consideration. Therefore we propose that where an application requires a license to operate, an integrated decision forum should be convened under An Bord Pleanála.

In summary the planning permission for the proposed operation should be heard by An Bord Pleanála, and this hearing should be supported and informed by the EPA's considerations of matters particular to the EPA's remit, for example emissions. It would also facilitate the integration of the HSE and other Health and Safety perspectives and considerations being included. This will enable the totality of the infrastructural requirements needed, and the totality of the direct and indirect and cumulative impacts to be taken into account in arriving at a decision. This is intended to address the major deficiencies and gaps in appraisal and oversight – such as in the Quinn Power Plant decisions by both the EPA and An Bord Pleanála, wherein the specification and impact assessment of major infrastructural elements needed for the operation of the plant and its discharges were not addressed by either decision making body.

The same requirement for a joint decision framework should be applied to license reviews. This will ensure that requirements for emission management, which may

require updates or changes to a plant or its wider operational infrastructure, will be considered from a planning permission point of view also.

So in effect where a facility is granted permission under this joint framework under An Bord Pleanála, the matter of issuing the license subsequently by the EPA then becomes more of an administrative matter.

This proposal would serve to deliver a number of positive outcomes including:

- Leverage of efficiencies across both organizations - potentially reducing costs;
- Deliver on outstanding compliance matters with Europe in relation to split-decision frameworks and project-splitting
- Facilitating a reduction in the time-frames for industry in processing their applications –as instead needing two separate decisions in both the EPA and the Board – one forum suffices
- Reducing the overhead incurred by the public in addressing any objections across two agencies and forums
- Reducing the risk of environmental damage through incomplete or fragmented decision making which has in the past led to major infrastructural components and impacts being omitted from either decision.

Clearly the intricacies and practicalities of configuring such a proposal will require close consideration and should be implemented as soon as possible.

## **5. Provide a structure to conduct a substantive review of decisions**

In those cases where the Board isn't hearing an appeal but rather is making the first decision – for example under Strategic Infrastructure Legislation – there is a need to provide for a substantive review and one which can be provided without prohibitive cost – in order to comply with the Aarhus Convention and European Directives. Such a process and associated structure needs to be created to provide for an opportunity to review decisions and in so doing provide every opportunity to ensure environmental damage is not occasioned as a result of poor oversight of decision making. Such a structure could be chaired by a member of the High Court, with appropriate environmental perspective, in order to provide for the independence of the body. Additional perspectives would be required to provide Planning expertise and expertise in Environmental Sciences.

Under this new regime, recourse could still be made to the High Court on points of law – under Judicial Review procedures – as is currently the case

Again this would serve to address Ireland's compliance deficits and the financial liability associated with same

## **6. Provide for an Environmental List within the Court System & Associated reform of penalty provisions for environmental crimes and damage.**

The practical concerns with progressing effective enforcement within the current court system will be outlined later in the section on Enforcement within Part C of this submission.

In order to effectively support the Agency in ensuring the fundamental principles that:

- The Polluter pays
- Responses are proportionate
- Remediation is addressed

- decisions need to be made by courts with an informed environmental focus. In other words decisions on environmental matters need to be made by a court which has had the opportunity to become familiar with:

- The range of environmental law in the first instance both nationally and beyond
- The complexities and nature of environmental considerations
- The basic technicalities associated with emissions in general

Hence our recommendation for an Environmental List within the Court System, and to explore the legislation which may be available to support the implementation of such a proposal.

Additionally, the penalty provisions available to such a court need to be reviewed, and the implications of transposing and implementing the European Directive on 'The Protection of the Environment through Criminal Law'<sup>2</sup> also need to be addressed.

Consideration might also be given to the creation of technical juries when addressing this recommendation.

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<sup>2</sup> DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008

on the protection of the environment through criminal law

## **7. Widen the remit of the Enforcement Wing of the Agency and improve its function through the creation of an Environmental Crime Investigation Unit.**

The remit of the Enforcement unit needs to be extended and/or have increased focus to:

- Identify unlicensed activity
- Pursue non-compliance of licensed facilities
- Inform revised conditions for licenses where operations are causing unacceptable environmental impacts, and to drive the immediate review of such licenses

There is a need for an Environmental Crime Unit – with investigative skills, and with powers to enter premises and seize property and evidence – with appropriate controls thereof of course. This is to facilitate the building of robust evidence-based cases to support effective enforcement proceedings.

Such a unit should be able to draw on and interact with the other agencies such as An Garda Síochána, The Criminal Assets Bureau and The Office of the Revenue Commissioners for example; in addition to the NPWS; to explore the full extent and trail of operations and associated environmental damage in environmental cases. Cross-border relationships and bodies will also need to be enhanced, given the tendency for the border to be used to mask and manage environmental crime.

Additionally, in response to the query raised under 'Best Practice' in the consultation documents in relation to the UK debate - the Group would welcome the opportunity to discuss the implications of the UK debate on such matters particularly in relation to recommendations 1-7 above; and also with reference to the report of the working group on access to justice in England and Wales<sup>3</sup>; The Right Honourable Lord Justice Jackson's review of Civil Litigation Costs<sup>4</sup>, and Sir Robert Cairnworth's paper on Environmental Tribunals<sup>5</sup>.

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<sup>3</sup> The Report of the Working Group on Access to Environmental Justice reports: '*Ensuring access to environmental justice in England and Wales*' May 2008

<sup>4</sup> The "*Review of Civil Litigation Costs FINAL REPORT*" By the Right Honourable Lord Justice Jackson

<sup>5</sup> "*MODERNISING ENVIRONMENTAL JUSTICE Regulation and the Role of an Environmental Tribunal, Dec 2009*" - Sir Robert Cairnworth

## **8. The relative responsibilities of the NPWS and the EPA for biodiversity considerations need to be clarified and optimized.**

This is an area of some sensitivity. There is generous acknowledgement of the relative skills within both agencies and also of their vulnerabilities. Optimising the engagement model and getting clarity on roles and responsibilities is an area we would like to discuss further with the Review Panel in order to:

- Ensure biodiversity considerations are addressed optimally
- Achieve an integrated and complimentary approach across both agencies on a number of requirements essential to the effective management of Ireland's biodiversity
- Address aspects of recommendations within the 'OECD Environmental Performance Review of Ireland' report

## **9. Specification of additional licensing functions for the EPA**

Notwithstanding concerns expressed about the performance of the EPA on its licensing remit - its relative performance is seen as better than that of the Local Authorities on the matter of waste licenses and permits. The whole area of waste policy and associated legislation is undergoing major review. The whole area of National Waste Infrastructure Planning is likely to trigger changes through the licensing and permitting arrangements. We would contend that there may be additional efficiencies from the centralization of waste licensing and permitting to the EPA. Certainly there is a need for the EPA to play a 'policing role' in providing oversight of any devolved licensing or permitting arrangements by the Local Authorities.

The EPA has provided guidelines and standards in relation to septic tanks and should have an oversight and policing role in relation to upgrade-programmes for septic tanks.

Other areas identified as possible candidate areas for licensing consideration include mobile phone masts, additional considerations in relation to forestry licenses and in managing the environmental impacts of forestry, and in addressing issues with poison bait. These are dealt with in a little more detail in Parts D of this submission, within more specific recommendations made on licensing.

## **10. Improved leverage of Environmental Monitoring & Assessment Information in assessing and feeding into National Strategies and Plans**

One of the EPA's strengths is the amount and quality of data it has access to. Greater consideration should be given to how this can be used to drive policy and strategy assessment and review at the national level. Priority needs to be given to evaluating and aligning Government strategy and policy with environmental sustainability. For example Transport 21, The National Development Plan, Greenhouse Gas Emission Plans, Proposals from the Innovation Task Force, and Energy strategies etc – and all such plans need to be assessed in terms of their alignment with our environmental objectives and obligations, and the findings of our Environmental Assessments. Strategies and plans which are not consistent should be highlighted clearly and unequivocally; and signaled for review. In summary, there is no point in the EPA on the one hand stating in its 'State of the Environment' report in 2008 that: "*Climate change is recognized as the greatest threat to the planet and the greatest challenge facing humanity*", and continuing on to say that we must therefore reduce our greenhouse gas emissions by reviewing among other things our transport patterns; if on the same hand it does not directly challenge a Government policy to build some 850km plus of new roads by 2015. Further detail on this is provided in the section on Assessment in Part C.

Similarly initiatives associated with the Water Framework Directive such as Shannon water diversion/utilisation proposals need to be subject to Strategic Environmental Appraisal, SEA; and also assessed in terms of their compliance or otherwise with COP6 requirements of the International Convention on Biodiversity.

## **11. Improved engagement of and by the public in the stewardship of the environment to:**

- **Create a real appreciation of the alignment of interests between human health and environmental factors and thereby influence behaviour and choices to create positive environmental outcomes**
- **Generate greater leverage of the public at large in compliance and monitoring and response to environmental matters**

There are two fundamental aspects to this recommendation, both building on the fundamental concept within Aarhus of the importance of access to information.

Firstly, the EPA needs to change the mindset and hence the behavior of the public at large and in so doing create improved environmental outcomes. However the packaging or presentation of information by the EPA is not compelling; and the mechanisms used to disseminate that information are not appropriate to the public at large. A major overhaul of its communications mandate

and improvement in the EPA's communication capability and effectiveness is required as a critical priority.

This is particularly essential in order to address environmental challenges such as climate change effectively. Because engagement of the population at large is essential in order to orchestrate the level of change in behavior and choices needed to alter the impact of our human activity, in order to meet our climate change responsibilities. Climate change is a process, environmental degradation is a process, changing behavior is a process; and the communications needed to support that also need to be a process and not just an event such as is typically employed when the EPA issues a press-release about a new report. Typically there is little or no follow-up to such events, with the public at large left to decide itself if it wishes to pursue a greater understanding, and whether they wish to digest a report some several inches thick, and which incidentally has to be found and downloaded off the EPA's website! The information or messages within such a report should be re-packaged and delivered in multiple forms and across multiple media. In summary, communication on matters such as climate change needs to be structured and presented so that it permeates our activity seamlessly, and on into our consciousness and consequently into our behaviour.

Secondly, and again building on the strength of the EPA's information services - priority should be given to provision of layered environmental views, with an enhanced ability to drill down through different layers of the environmental information presented to a very specific local area and perspective, where one can pinpoint environmental indicators and locations with bad or altered health status.

Associated local networks could then review the area in question, take samples and make observations. This could then serve to facilitate early intervention at root causes and limit environmental damage. In brief something analogous to the Water Keeper legislation might be used to create an 'Environmental Keepers' model. The intention would be to:

- Facilitate practical application of the information the EPA has at its disposal in creating positive environmental outcomes
- Enable greater use of the public at large in compliance and monitoring. This which would serve to complement the EPA's own infrastructure, and also serve to create more timely response, and a broader culture of environmental stewardship

## **12. Maintain the Review Panel as a steering group for the implementation of the Review Panels approved recommendations.**

A programme of work needs to be specified to address the implementation of the Review Panel's final recommendations. As with any programmed this requires the oversight of a steering group to among other things to

- Provide overall direction
- Ensure the end objectives or outcomes are kept in focus;
- Evaluate the success in delivery of critical outcomes.

It is essential that both an overall programme to implement the final approved recommendations be developed, and that this be overseen by a Steering Group familiar with the underlying rationale for the changes. The danger otherwise is that a number of recommendations will be picked off for implementation in isolation – without any ongoing co-ordination of the complimentary nature of many of the recommendations which is essential to delivering a real benefit and impact. The other danger is that there would not be proper evaluation of whether the required objectives and outcomes have really been delivered upon, without the informed co-ordinated oversight by the steering group

It is recommended therefore that the Review Panel would be maintained as the Steering Group for the programme to deliver on the recommendations adopted.

Additional members of such a steering group should be considered. However it would be critical to maintain a distinction between it and those responsible for delivering the changes in the associated Programme Management Team.

The Programme Management Team which would need to include sufficiently empowered representatives from all the areas where change is required, in addition to expertise on both Programme Management and Change Management. The model envisaged has been employed successfully to steer other major change programmes to success in Government and in the business world. It is particularly useful in levelling the playing field, and for creating focus on what needs to be delivered.

# **Part C**

## **Sections 4-10. Other Finding Consultation Queries and Conclusions**

## 4 Legislative Framework

This section addresses the findings of the Pillar in relation to the underlying legislative framework for the protection of the environment; in sub-section 3.1. It also responds to the queries raised in the consultation document on the legislative framework and draws a number of conclusions in sub-section 3.2.

## 5 Findings:

- 5.1.1 There has been an evolving piecemeal approach to the EPA's legislative remit with the original EPA Act of 1992 focusing on regulatory and licensing functions.
- 5.1.2 This has been overlaid with additional remit added through various Waste Management Legislation changes, and further addition of incremental and ad-hoc responsibilities.
- 5.1.3 The EPA's legislation is effectively for pollution licensing and is not the legislation of a proactive Environmental Protection Agency
- 5.1.4 The EPA's legislation has not been updated to reflect:
- Climate change
  - A number of international conventions whose overall ratification, transposition and implementation is required such as The Stockholm Convention on POPs and the Aarhus Convention and the Ramsar Convention.
  - Numerous other European Directives including, but not limited to: The environmental liability directive<sup>6</sup> and the directive on the protection of the environment through criminal law<sup>7</sup>

<sup>6</sup> Directive [2004/35/EC](#) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

<sup>7</sup> DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008 on the protection of the environment through criminal law

- 5.1.5 The EPA has no remit under the Habitats<sup>8</sup> or Birds<sup>9</sup> Directives and associated Regulations. While the prime responsibilities may lie elsewhere, the EPA must ensure that all of their licensing and other activities are in full compliance with these requirements. Clearly also the proper transposition of these directives is a further outstanding issue. Ideally the EPA should take a more proactive stance in relation to their implementation.
- 5.1.6 The EPA has a role in implementing the SEA Directive<sup>10</sup>, which, of course, does have a significant biodiversity element. This therefore should suffice as a reason for the EPA to take a more proactive role in biodiversity protection and management alongside the NPWS.
- 5.1.7 The EPA has no 'public interest', or 'common good' remit – and this omission is considered to be inappropriate for an 'Environmental Protection Agency'.
- 5.1.8 Extensive exemptions granted for Agricultural activity, Local Authority Development and also under The Turf Act in addition to a range of other areas – serve to frustrate and undermine environmental protection provisions.
- 5.1.9 There are fragmented responsibilities across agencies in dealing with licensing matters and this creates numerous problems including increased overhead, lack of clarity on responsibilities, incomplete perspectives and poor overall oversight. For example in relation to waste management - Local Authorities issue waste permits and the Agency issues Waste Licences and the overall oversight and coverage of waste activity is seen to suffer from this fragmented approach.
- 5.1.10 Ireland's legislation as a whole doesn't reflect an integrated approach to environmental management & protection.
- 5.1.11 Proper transposition and implementation is needed for a number of European Directives such as the EIA directive<sup>11</sup>, the Birds and Habitats Directives as a priority.

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<sup>8</sup> [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#)

<sup>9</sup> [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (this is the codified version of Directive 79/409/EEC as amended)

<sup>10</sup> 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

<sup>11</sup> COUNCIL DIRECTIVE of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)

The environmental liability directive<sup>12</sup> and the directive on the protection of the environment through criminal law<sup>13</sup> are also needed. International conventions such as Aarhus, The Biodiversity Convention, The Stockholm convention on POPs, and Ramsar are in various stages and these need to be fully resolved and implemented in Ireland. Additionally complimentary reference to the latest international environmental standards and guidelines from such agencies as The World Health Organisation is needed in our decision making and standards.

5.1.12 There is a need for localisation of other Directives such as the Nitrates directive and GMO legislation to address matters such as soil permeability, rainfall and temperature etc. The EPA must make a strong input to the forthcoming review of the Nitrates Regulations.

5.1.13 Numerous other acts such as the Foreshore Act 2009, Dredging and Dumping at Sea legislation and the Forestry Acts need to be addressed with proactive input from the EPA in the light of emerging environmental problems.

5.1.14 The new Planning & Development Legislation also need to be considered in terms of addressing environmental considerations, as does a consolidated Wildlife Act, where among other matters, legislation needs to consider the issues associated with the use of poisoned bait.

5.1.15 The whole area of waste policy and associated review of Waste Legislation needs to be considered from a holistic environmental perspective.

5.1.16 The Strategic Infrastructure Act presents a number of concerns which need to be addressed, including but not limited to, concerns on public participation, access to justice and split decision frameworks.

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<sup>12</sup> Directive [2004/35/EC](#) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

<sup>13</sup> DIRECTIVE 2008/99/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008 on the protection of the environment through criminal law

### 5.1.17 Consultation Queries: Responses and Conclusions

Specific questions were posed by the Consultation Document and these are included in the grey frame and italicised text below - with the associated response and conclusions following.

*Query: Is the legislative framework governing the EPA appropriate to meeting current and emerging challenges?*

#### **Conclusion & Response**

No, the legislative framework governing the EPA has been developed in a piecemeal fashion based on an initial regulatory and licensing function. This has been overlaid with waste management legislation to provide further responsibilities and so on with other legislation. There is therefore an absence of a coherent underlying legislative framework which integrates various environmental issues and themes. All of this needs to be looked at and addressed in the context of the role envisaged for the EPA in the future and its responsibilities for numerous factors including but not limited to climate, the 'public interest' or 'common good' and biodiversity.

*Query: What legislative amendments might be necessary to strengthen its ability to deliver better environmental outcomes in the future?*

#### **Conclusion & Response**

There is a need for:

- a) A coherent underlying legislative framework for the agency. This needs to be looked at and addressed in the context of the role envisaged for the EPA in the future and its responsibilities for numerous factors including but not limited to climate, public interest, biodiversity; and potentially to allow for the strengthening of its enforcement wing's remit over other parts of the agency; and to address other proposals associated with the provision of investigative powers etc as outlined in our Enforcement Recommendations.
- b) A number of other complimentary legislative initiatives to allow to allow for the proper and coherent transposition and application of key directives such as the EIA, SEA, Habitats and Birds Directives, together with The Environmental Liability Directive, and the directive on the protection of the environment through criminal

law. Additionally outstanding issues to allow for the implementation of international conventions such as the Aarhus convention, the Biodiversity convention, the Stockholm POPs convention, and the Ramsar convention also need to be addressed.

c) Other legislative changes which might be considered would be those associated with our overarching recommendations for example legislative changes to:

- Address new decision frameworks across both An Bord Pleanála and the EPA
- Provide for a further level of oversight and substantive review of decisions - thus addressing the requirements of the Aarhus convention
- Provide for or enact a legislative framework for an Environmental List within the Court system from District Court all the way up to and including the High Court
- Address associated reforms of penalty provisions for environmental crimes and damage

## 6 Licensing & Permitting Activity

This section addresses the findings of the Pillar in relation to the Licensing and Permitting in sub-section 5.1. These findings are broken down into further sub-sections namely:

- *5.1.2 Process Concerns*
- *5.1.3 Decision Making Frameworks*
- *5.1.4 Appeals and Complaints*

Finally, this section also responds to the queries raised in the consultation document on the topic of Licensing and Permitting and draws a number of conclusions in sub-section 5.2.

## 7 Findings:

### Overall Comment

There was acknowledgement that there has been improvement in the area of Licensing across the industrial activity which requires license to operate – in that there is a sense that the number of such facilities which are now covered by license has increased. However the over-riding weight of evidence offered and comment pertained to the continued existence of a significant amount of effectively unlicensed activity in Ireland across a number of areas. This view was coupled with a strong dissatisfaction with the EPA's performance on licensing across a number of dimensions including overall performance and coverage, process issues, decision frameworks, the impact of licensing and compliance management.

Areas where concerns on the unlicensed activity and performance arose included, but are not limited to peat extraction, mushroom, poultry and pig farming, sawmills, metal processing plants and aquaculture.

Again it is important to note while there are underlying issues with the performance of the EPA, a number of the factors which give rise to these concerns and issues, are factors external to the EPA, and are outside its immediate control to resolve, such as the legislative context etc.

**Note A :** The level of detail presented below in reviewing a number of aspects of Licensing and Permitting is greater than that which is presented for other topics in the consultation. This is to some extent a function of the breadth and depth of concerns with this area and the restriction to the amount of comparative detail presented in other sections is to some extent a function of time. However it was consciously decided to allow for a greater level of detail to be presented on at least one area - as it will serve to highlight the nature of underlying concerns amongst the Pillar organisations; and the dilemma faced in terms of finding a 'safe pair of hands' for the many recommendations arising from this consultation. Recommendations for an organisation cannot be viewed in isolation of the underlying concerns with its existing performance. Additionally the soundness or otherwise of the foundation provided by the existing organisation - adds to the complexity of configuring an appropriately structured response against which to direct and implement recommendations, and to the requirements for monitoring and adjustment mechanisms to ensure the successful implementation of recommendations.

**Note B.** Specific examples were discussed to clarify the nature of the concerns vis-à-vis the Agency's performance on Licensing and Permitting and as these may be further outlined in a subsequent appendix to this submission; time and resource permitting. These examples included among others classic cases such as: the Meenaboll Landfill in Co Donegal, The Lickey Valley Landfill in County Waterford, The Thorntons Recycling & Landfill at Ballynadrummy by the Boyne in Co. Kildare, Peat Extraction in County Westmeath, Indaver Ringaskiddy, Askeaton and a number of other cases have been considered in producing our findings They will be only briefly referenced here, and the Pillar wishes to assure the Review Panel they will be happy to provide more information to assist them on such considerations.

The findings on Licensing are divided across the following headings:

- 5.1.1 Process Concerns
- 5.1.2 Decision Making Frameworks
- 5.1.3 Appeals and Complaints

### 7.1.1 Process Concerns:

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- **5.1.1.1** A fundamental concern exists relating to the assessment undertaken to inform decisions on licenses and lack of compliance with EU legislative requirements in particular.

**5.1.1.1a)** For example, the complete absence of Appropriate Assessment as required under Article 6 of the Habitats Directive, and similarly the omission of Environmental Appraisal as required under the EIA Directive has been identified in a number of license applications wherein the EPA proceeded with a decision to issue licenses regardless of the concerns raised regarding such requirements. The underlying issues with poor transposition of these directives are noted. *[Examples Peat Extraction and Poultry farms]*

**5.1.1.1b)** Coupled with this, there is strong evidence of the acceptance by the EPA of significantly deficient Environmental Impact Statements, and of the EPA's willingness to issue licenses on the back of major information gaps. An Bord Pleanála in adjudicating on the associated planning permissions for licensable applications has refused permission on grounds of the deficiency of information provided pertaining to matters such as impacts on water quality and pollution risks. While at the same time the EPA has been satisfied to grant licenses to the same applications based on the same deficient information. *[Examples: Meenaboll Landfill in Co. Donegal and Thorntons Recycling & Landfill at Ballynadrummy, by the Boyne in Co. Kildare]*

- **5.1.1.2** Equally decisions to screen for the requirement to undertake an 'Appropriate Assessment' have come under criticism, with evidence of environmental impacts appearing to be discounted in initial screening decisions without explanation. Additional concerns have been noted on the lack of consultation undertaken by the EPA with other agencies such as the NPWS in determining if an 'Appropriate Assessment' is required for license applications close to Natura 2000 sites. For example the EPA in determining that no Appropriate Assessment was required to assess environmental impacts on Natura 2000 sites for peat extraction operations in Co West Meath between Lough Sheelin and Lough Derravaragh - appear to have discounted or ignored reports outlining the decline in particular bird species on Lough Derravaragh over a period when significant unlicensed peat extraction was being performed locally. Furthermore 'Access to Information on the Environment Requests' testify to the lack of consultation

undertaken by the EPA with the appropriate agencies in coming to the conclusion that no Appropriate Assessment was required. A number of these cases have been further frustrated by lack of formal Environmental Impact Appraisal despite their meeting the threshold limits requiring same under the EIA directive.

- **5.1.1.3** There is a lack of consistency in the approach applied to the EPA's decision making on license applications – giving rise to concerns about the other influences which pertain. *[For example Meenaboll Landfill in Donegal was given a licence by the EPA while Lickey Valley in Waterford refused. The Meenaboll site was particularly complex given its proximity upstream to an SAC and its overall situation on peatland with the associated complex hydrological implications. The Lickey Valley dump was refused due to concern of environmental risk in particular to the adjacent SAC and fresh-water pearl mussel habitat, while the EPA granted a license for similar proposals on the very complex Meenaboll site ]*
- **5.1.1.3.** The lack of provision for the formal involvement of other agencies to feed into the licensing decisions of the EPA is of concern. An Taisce is the only prescribed body for EPA licenses, but it is not funded or resourced to cope with the volume and complexity of applications, and the numerous dimensions and impacts to be assessed.
- **5.1.1.4.** There are concerns about the level of engagement of parties who need to support the impact of licensing decisions – such as hospitals and the fire service. In the context of sub-Seveso applications there is no clear framework requiring the involvement of the local fire services to inform license conditions to address operational considerations; or to keep the local fire services apprised of the nature and volume of materials on site – such as flammable or toxic substances which the fire service might be called upon to deal with in the event of an accident of major incident. Even in the context of Seveso II establishments, the expression of an intention to engage with hospitals to document an accident plan appears to suffice for a license to be granted. The frameworks seem to require little or no account to be taken of the hospitals ability to cope with the risk presented unless this is raised by appellants to the applications; and there is no requirement or obligation on the applicant to support a hospital's ability to build the capability necessary to service the risk presented by the operation of a Seveso II site.
- **5.1.1.5.** Lack of conformity of both applications and the decisions of the EPA to legal requirements was also raised, with concerns noted on the overhead to the community and other stakeholders. For example the EPA will accept incomplete applications and initiate consultation, necessitating engagement by the public, when the application should be summarily deemed invalid. Equally the EPA when it

issues decisions does not observe requirements to provide information on Judicial Review procedures. Given the very short timeframes allowed for the initiation of Judicial Review this omission is considered an unacceptable and a frustration of fair proceedings.

- **5.1.1.6.** It is perceived that an unfair competitive advantage is offered to un-licensed operators who are not proactively pursued by the EPA. As these operators consequently do not incur the overhead of monitoring and compliance regimes. Additionally they do not incur the cost of infrastructural provision to manage their emissions – while those operations who comply do incur such costs. This was seen as a major disincentive to compliance in general, and is contrary to making sure the ‘polluter pays’ principle pertains.
- **5.1.1.7.** The concept of a ‘fit person’ requirement for a prospective license holder was seen to be an important consideration. However the practical application of this principle for today’s considerations and environmental requirements was seen to be problematic; and persistent offenders or those who are under investigation for licence breaches continue to be granted licences (e.g. Standish Sawmills, College Proteins etc). The underlying concern is that commercial considerations outweigh environmental concerns in the decision making of the EPA, and that the ‘fit-person’ requirement needs to be revisited particularly in the light of environmental damage considerations.
- **5.1.1.8.** Lack of Public Participation in the decision making and compliance management processes was also an issue, with lack of real compliance with the EIA directives requirements on participation throughout all the decision and information gathering points not being observed. Other more granular concerns relating lack of confidentiality of names for those making observations or complaints on facilities were seen to act as a disincentive to public engagement. The model, where the police hold the names of those making complaints or reports in confidence, was seen as a more appropriate model to encourage people to engage and come forward with information on licensing matters - in the greater interest. The practical social constraints for neighbours in highlighting breaches or issues on each other; or indeed for employees to comment on their employer’s operations; or those subject to the controls of others such as Fishermen would be to a Harbour Master - were all seen to be disempowered by the EPA’s practice of keeping names available on file. This practice was seen to be contrary to the essential engagement of the public at large in the role of shared environmental responsibility.
- **5.1.1.9.** In areas which have more recently come under the EPA’s licensing jurisdiction, the reduced timeframe for public participation and lack of appeal on

decision was viewed as inappropriate. Timeframes for engagement in the licensing consultation process have been reduced from the more typical 28 days to 21 days for both GMO & Dumping at Sea. Again in the context of the volume and complexity of materials this was not seen as appropriate. The absence of any appeal on Dumping at Sea Licences was criticized. The fragmentation of decision making across Dredging permissions and Dumping at Sea was seen to be particularly inappropriate and lack of clarity on the model for managing Dredging licences was of concern also. It also served to undermine confidence in any effort to extend the EPA's licensing remit further. The period of consultation should allow at least for a two week announcement period, followed by a four week consultation period at a minimum. These timeframes would allow for some recourse to being able to make 'Access to Information on the Environment Requests' which might be needed to inform responses to the consultation activity.

- **5.1.1.10.** The matter of Thresholds to drive licensing requirements was also of concern. The level of threshold in some instances was not seen as appropriate and needed to be lowered in order to manage or indeed avoid negative environmental impacts. Additionally, the practice of project slicing was seen as too prevalent and openly entertained, by manipulation the size of the operation presented in the application in order to avoid licensing requirements in the first instance; and in other cases it is used to reduce the level of environmental impact appraisal required. Peat extraction was cited as a classic example to outline all three concerns, with sites operating at 1 hectare below the thresholds to avoid EIA, and clearly contiguous sites being presented as separate operations again to limit EIA requirements. *[example Peat extraction Westmeath]*

Concerns around the lack of proactive licensing and proper assessment of peat extraction activity by the EPA are not limited to biodiversity considerations, such as loss of habitat and species. Additional concerns were noted on the human health considerations posed by the complex interaction of peaty water with the associated dissolved organic compounds interacting with chemicals in water treatment plants such as chlorine, creating trihalomethanes; some of which are carcinogenic and which can have other adverse health impacts at high concentrations. Further concerns were raised in terms of the wider climatic impacts of the extraction also.

- **5.1.1.11.** Other concerns relating to Project Slicing were based on the incomplete determination and consideration of both direct and indirect and cumulative impacts of applications. For example licences are being granted for poultry farms without consideration for the disposal of the associated waste discharges and the environmental impacts of same. In brief the totality of the EIA directive needs to be addressed in the making of license decisions.

- **5.1.1.12.** The splitting of waste permits and licenses across the Local Authorities and the EPA was seen as problematic. There is a need to police the Local Authorities performance and indeed to support its enforcement in some instances. Additionally, the lack of oversight of whether facilities are covered by one or other system is not being addressed.
- **5.1.1.13.** The decision making criteria applied by the EPA in granting licences is of concern. The most recent case in point being the granting of a landfill licence in North County Dublin on an aquifer, which among other considerations is a critical water source for major food production. The decision making criteria applied in this case as in other instances, require review.

### 7.1.2 Decision Making Frameworks.

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- 1 Strong concerns were expressed about the issues which arise because of the split decision framework between An Bord Pleanála and the EPA; wherein a facility applies to the board for planning permission for the infrastructure and the EPA for a license on the emissions from the proposed operation. In some instances this has led to matters, particularly pertaining to human health and biodiversity impacts and landscape, falling between two stools. The Quinn Power Plant in County Louth being a classic case in point. The site in question was effectively a green field site. It was given both planning permission and licenses to operate by the two agencies involved. However the matter of infrastructure for the water discharges from the facility remained completely unspecified and its impacts unexamined; by both decision making authorities, as did the matter of Compulsory Purchase Orders required to facilitate the development of such infrastructure. In this instance the deficit in examining impacts was underlined by the fact the impact of discharged water was ignored and the impacts of any infrastructure to be specified to deal with the discharge was not assessed. They were split-off effectively to be seen as a separate project, with no overall perspective on the environmental impact of the total project being assessed properly in the first instance, as is required by the EIA directive.
- 2 There is no sense of wider strategic or contextual considerations being taken into account in the grant of licenses for facilities. For example the granting of incinerator licences with the consequential negative impact on our dioxin levels appears to discount the current economic value of maintaining the low levels of dioxins in Irish milk. The wider strategic importance presented by our Agri-Food industry which is worth over €16.8 billion to the state, and over half of which is exported, with 75% of those exports going to quality sensitive European markets, the value of our equine and tourism industries and their dependence on the ongoing quality of our environment – do not seem to be adequately considered by the EPA in its licensing decisions.
- 3 There is a lack of clarity on how considerations for National designations such as NHAs and pNHAs are addressed

- 4 The apparent lack of familiarity with or at least consideration of relevant standards and international conventions by the EPA in making its decisions is of major concern; and also in the terms and conditions imposed by it in the licenses it issues. For example there is a strong sense that the onus is on the appellants or those opposing an application to highlight such considerations as World Health Organisation Standards on Human Health, Noise, and Site Criterion for Incineration facilities for example. Additionally there is a strong sense of the need to highlight the implications of International conventions such as those on Biodiversity or the Stockholm Convention on Persistent Organic Pollutants, at EPA hearings. The widespread experience of numerous parties in the context of hearings conducted by the EPA contributed to this perspective. The lack of application of wider and up to date standards and considerations for license reviews was also a concern.

### 7.1.3 Appeals and Complaints

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- 5 The absence of an independent appeal outside the EPA for its decisions was not seen to be consistent with any concept of natural justice, and the provisions of the Aarhus convention or the requirements of Article 10a of the EIA directive, which provides for an independent and substantive review of a decision. It was acknowledged that the level of expertise required to support these decisions exists in a small pool and the ability to support a fully independent review is difficult. However given the public interest which is at stake there is a need to review and improve the existing arrangements for decision making and appeal.
  
- 6 There is a need for even greater transparency and confidence in the licensing decision frameworks given the very technical nature of the information involved. As it can be more difficult for the public at large to understand such complex issues and make an informed assessment of the issues and risks presented by an application and its associated operation.
  
- 7 The matter of lack of real accessibility of justice was a major concern. This is given the prohibitive costs involved with recourse to the courts and the limited terms for review entertained by the courts. These constraints were seen to undermine the ability to re-dress poor decisions and the environmental damage which results from poor decisions.
  
- 8 The complaints procedure of the EPA or Quality Customer Service, QCS system was not seen to be sufficiently open or focused. There was a sense that it is more directed toward license applicants, rather than the wider 'customer' network. Concerns were noted with lack of follow-up on complaints raised. Lack of meaningful engagement or 'outcome management' was also seen as an issue. Examples were given of cases where complaints had been made about facilities operating without licenses, where the EPA did not see fit to inform the 'complainer' – when a license was applied for in order that they might comment on it. [e.g. Westmeath peat extraction], and this was seen to signify the lack of effective engagement in addressing the concerns of the public and supporting them adequately in addressing these concerns fairly. There is a sense that there is no meaningful level of customer service provided to the public in general when raising a complaint – in particular when that complaint pertains to the operation or performance of the EPA.

- 9 The lack of oversight of the EPA's performance of its role in licensing was seen as a major vulnerability in the current system, not just in terms of specific decisions but overall performance and accountability for same
- 10 Multiple vulnerabilities or loopholes were also highlighted whereby activity effectively goes un-licensed by virtue of the fact that licenses are not required as a pre-requisite to operations and delays pertain to the issue of licenses.
- 11 The example of the Haulbowline activity was cited in this regard. In that case operations were commenced under new ownership in the mid 1990's, under a financial incentive scheme scheduled to operate over a six year period. When the financial incentive scheme expired – the plant ceased operation (as many had foreseen). But it had taken over 6 years and 2 months to issue a licence. Therefore the plant had effectively been operating without licence for that entire period.
- 12 Additional concerns were noted in relation to the practices agreed around Aquaculture licences which impact Natura 2000 sites, in the context of a roadmap agreement on how Ireland is to comply with ECJ rulings. This has resulted in a situation where those operations who have re-applied for licences can continue their operations regardless of the intermediate impacts on Natura 2000 sites until final decisions are made.
- 13 The practice of license holders being responsible for the provision of information regarding their emissions and their compliance to license conditions is seen as problematic and a conflict of interest. The EPA's practice of providing advance warning of site inspections is also seen as counter-productive. The practice of advance notification undermines public confidence in the value of such site inspections. The relative vulnerability of monitoring stations to be tampered with and for such interference to go undetected is also seen as an issue. There is frequent anecdotal evidence of operators having keys to monitoring stations and vacuuming dust monitoring stations in advance of inspection or data collection activity, and the temporary adjustment of feedstock to incinerators to influence emissions.

- 14 Lack of enforcement of the requirement to provide certain information on the site, in some instances, is seen to frustrate the ability to independently ascertain levels of compliance. The legislative change which means on-site information requirements is a matter to be stipulated in the license adds to this problem. There is a lack of real time on-line monitoring information available through a number of access points e.g. the operator's own site, the EPA's site and local authority sites, The physical nature of the files which means monitoring information may not be in the local office is seen as inhibiting oversight. The lack of ability of the public to be able to easily check on emissions in adjacent facilities frequently contributes to concerns and queries which could be easily offset if the real-time monitoring information and notices of exceedences was more readily available. The ESB's approach to highlighting dam management over the recent flood events is a model that could perhaps be explored.
  
- 15 Compliance is seen as an issue, particularly consequent on issues with poor enforcement and ineffective deterrents to non-compliance.

## 8 Consultation Queries: Responses and Conclusions

Specific questions were posed by the Consultation Document and these are included in the grey frame and italicised text below with the associated response and conclusion following.

The above set of findings is intended to set some basis for the brevity of response provided below to these questions and the conclusions we have drawn regarding “The EPA & licensing and permitting” in general. Such an approach has been taken given time constraints and the fact that findings noted above have implications and relevance across a number of the questions posed below and it avoids repetition.

*Query: “How well the Agency has performed its licensing function?”*

The findings outlined above indicate that significant concerns pertain to the Agency’s performance of its licensing remit. This is not only in terms of ineffective licensing-coverage of facilities which require licenses, but also to the requirements made for and decisions made on licensing applications; and the conditions in licences issued; and the Agency’s management of compliance with its grants of licence.

**Conclusion:**

The agency is not seen as proactively engaging to ensure all licensable activity is licensed, and stakeholders are not satisfied that appropriate standards and requirements are applied to the licensing of facilities and licensing conditions. At the very least there is not sufficient transparency and accountability in licensing decisions to explain what was taken into account in informing the requirements for the facility and the licence terms, with the rationale for decisions often appearing inexplicable. The agency is not seen as effective in enforcing compliance.

*Query whether stakeholders have concerns relating to the process of licensing?*

The findings outlined above indicate significant concerns exist in relation to a number of aspects of the processes and controls undertaken in determining licences in the first instance and also to the processes and controls for reviews of existing licenses.

**Conclusion:**

There is a considerable confidence issue in relation to the processes supporting the issue of licences in Ireland. Addressing this will require multiple interventions across multiple agencies and the total infrastructure of environmental governance in Ireland – reaching through the underlying legislative framework to the mechanisms for cross-agency engagement and the wider matter of public participation; in addition to reform of the EPA’s internal operational and oversight processes.

Loopholes in the process serve to undermine the positive effect or objective of bringing an operator into a licensed regime, wherein they can continue to operate effectively without control once they have applied for a licence. The ultimate customer or stakeholder from an Agency Charged with Environmental Protection must be the Environment itself. In this context date driven exemptions and allowances to licensing controls are not seen as appropriate – as to put it simply: environmental risk and damage is not influenced by whether the licensee operated before or after a certain date. The current focus of the licensing process in Ireland does not appear to be on the assessment and management of the environmental risk objectively, thoroughly, and consistently.

*Query whether licenses ensure compliance with EU and Irish environmental standards?*

The findings outlined above indicate both the processes to decide on licences and in a number of cases licenses themselves are not seen as compliant with EU standards. This is especially where the concept of standards is widened to include the standards to comply with the requirements of the relevant Directives in the first instance. For example, in the context of the EIA Directive – the standards would include the requirements detailed for the conduct of Environmental Appraisal both in terms of requirements to conduct one, and adherence to the stipulated process, and consideration of the totality of the requirements of the EIA Directive; not just Articles 3 and 5.

A response on the matter of compliance with Irish environmental standards requires further consideration by the Group this point. However it can be clearly stated the poor level of transposition of EU directives is a major issue in contributing to the poor compliance of Ireland’s licensable operations. Additionally the practice of aggregating data over a period is seen to potentially obscure evidence of point in time breaches or incidents – and therefore compliance with standards and thresholds cannot be fully assessed.

**Conclusion:**

The issuing of licences by the EPA does not serve to address compliance with Irish and European standards. Issues with the underlying legislative framework and poor transposition of EU legislation are responsible to some extent for this; coupled with multiple process issues in the issue of licenses leading to gaps in the considerations covered by the licenses in particular pertaining to biodiversity matters, and in the type and requirements of data collected which need to consistently require and provide for ‘exceedence’ reporting.

*Query: The level of compliance with licenses*

The findings outlined above indicate there are a number and profile of unlicensed facilities. This testifies to a poor level of compliance by the Agency with licensing requirements in general. In terms of compliance with actual licences issued. There is a perceived conflict of interest presented by licensees effectively being responsible for the provision of information to monitor their compliance. This serves to create an underlying confidence issue in the information provided, and for any assessment of compliance derived from it. The practice of the Agency in typically advising the licensee in advance of their inspections serves to further undermine confidence in the quality of the compliance monitoring regime. Additionally, the continued existence and operation of persistent offenders, and the low level of enforcement, coupled with the low level of penalties secured against offenders, all serve to underline the sense of a poor compliance regime.

**Conclusion:**

Compliance with the requirement for a licence in the first instance is an issue and the EPA is not sufficiently proactive in pursuing this. There is an underlying confidence issue in the determination of the overall level of compliance - consequent on the conflict of interest perceived by the fact the licensee effectively provides monitoring and compliance information to the Agency and the Agency typically advises the licensee in advance of their inspections. The continued existence of persistent offenders as licensed operators serves to add to this lack of confidence; and the poor enforcement regime which admittedly is consequent on a number of factors, some of which are outside the agency's immediate control, also serves to contribute to a poor compliance expectation and culture.

*Query whether significant unlicensed activity persists in areas controlled by the Agency*

The findings acknowledged that there has been improvement in licensing across the industrial activity which requires licenses to operate. However the over-riding weight of evidence and comment pertained to the continued existence of significant amount of effectively unlicensed activity in Ireland across a number of areas including, but not limited to peat extraction, mushroom, poultry and pig farming, sawmills, metal processing plants, and aquaculture.

**Conclusion:**

Significant unlicensed activity persists in areas controlled by the Agency to the significant detriment of the natural environment and its biodiversity and to other human health considerations. The nature of un-licensed activity is not limited solely to the lack of licensing of particular facilities, but also to the lack of licensing of consequential or indirect impacts of the operations of facilities which may in themselves be licensed.

*Query whether other classes of activity should come within its licensing remit?*

The internal exercise to support this submission identified a number of areas which should be subject to licensing control and where potential enhancements or modifications to existing licensing regimes were also identified. However, there were concerns arising from the performance of the EPA and the underlying process approach which is employs. Therefore the agency was not automatically seen as a natural agent or champion to address these new areas; and reservations were expressed about extending its remit. These reservations were not only as a result of current performance issues but more particularly in the light of the restrictive and backward step taken in the new processes employed by the EPA in addressing new licensing remits – such as Dumping at Sea licences; where reduced timeframes are seen to frustrate the level of public participation and wider scrutiny these licences will be subject to and the lack of recourse to appeal is seen as unacceptable.

Other areas where greater or enhanced licensing control and perspective was seen as desirable included: the use of poisoned bait, mobile phone masts, waste Permits issued at Local Authority Level, upgrades to septic tanks. Enhancement of the Emissions Trading Scheme, (ETS) to consider the wider implications of Tree Cover

measurements (a point which is elaborated on later in this submission under Climate recommendations) was also raised.

Additionally the wider environmental impacts of forestry licenses were another area identified as needing improvement in particular. A number of considerations were raised here as requiring greater consideration including the implications of monoculture and non-native planting schemes; with the associated implications for invasive species and requirements for herbicide and pesticide controls required and the need to licence same. Also felling controls and the need to address the environmental risks associated with felling, including release of sequestered carbon when soil is disturbed, and the silting and eutrophication that can take place in water sources etc. were also raised.

**Conclusion:**

***There are a number of areas where the introduction of licensing or enhancement of existing regimes could bring benefit and reduce the risk of environmental damage from the associated licensed operations. The role and potential remit of the EPA in this should be explored but the fundamental performance issues of the agency in relation to its existing remit, together with extensive changes needed to the environmental governance and management framework – both need to be taken into account before the Agency can be viewed with any confidence as an appropriate target for further responsibilities.***

## 9 EPA & Compliance

This section addresses the findings of the Pillar in relation to the Compliance in sub-section 5.1. It also responds to the queries raised in the consultation document on the legislative framework and draws a number of conclusions in sub-section 5.2

### **10 Findings:**

- 10.1.1 IPPC licensed discharges were named under 'point source pollution' pressures as one of the main categories of environmental pressures identified as putting Ireland's water bodies at risk of not reaching 'good status' by 2015, in the results of the study 'Characterisation and Analysis of Ireland's River Basin Districts', which was undertaken to fulfil Ireland's obligations under Article 5 of The Water Framework Directive.
- 10.1.2 The underlying issues need to be identified in terms of:
- 10.1.3 Whether licensed discharges are being exceeded
- 10.1.4 Whether permitted levels are contributing to unacceptable pollution pressures
- 10.1.5 or
- 10.1.6 Whether both a) and b) considerations pertain.
- 10.1.7 A more concerted review of EPA licensed facilities should be undertaken to help clarify this matter, and to inform actions, licence reviews and licence policy accordingly. This should be addressed even if it requires using the interim classification standards for water bodies.
- 10.1.8 There is too much dependence on information effectively provided by the licensee in determining compliance.
- 10.1.9 Owing to aggregation of information on emissions – there is a concern that the effect of extreme breaches or incidents may be obscured or undetected.

- 10.1.10 The practice of announcing site inspections is considered to be counter-productive from an environmental risk management point of view, and undermines public confidence in the effectiveness of the compliance regime.
- 10.1.11 There is a need to invest in 'tamper-proof' – or 'tamper-tell' solutions for monitoring stations. This is so that interference with a monitoring station can be prevented, or detected at the very least, and associated alarm bells raised and actions initiated.
- 10.1.12 The absence of good-baseline data on background levels of substances and human health and populations of species etc is a concern. This undermines our ability to assess unacceptable or damaging environmental impacts.
- 10.1.13 While there are issues with the EPA compliance regime – it is seen as better than that of the Local Authorities.
- 10.1.14 The tendency of the EPA to pursue enforcement in the district courts where fines are limited is seen as inappropriate in creating a meaningful deterrent.
- 10.1.15 Awareness of environmental law, in particular EU legislation and the complexities of environmental considerations need to be addressed across the judicial framework.
- 10.1.16 There is an underlying concern that the EPA is vulnerable to influence given its budgetary dependence from Government. There is an associated concern that pursuit of enforcement action may be influenced too much by other pressures such as protection of jobs and other sectoral and commercial influences, and effective lobby groups.
- 10.1.17 There is a strong sense that the EPA will do anything or more accurately will do nothing rather than hurt industry. The Standish sawmills case is the classic case to demonstrate such concerns. There is a need to focus the EPA on its primary responsibility to protect the environment and wider public interest and to consider commercial matters as secondary to that.
- 10.1.18 The EPA is not seen as proactive in driving compliance and enforcement, with the latter being more as a result of continued complaints from the public.
- 10.1.19 There is a sense the 'polluter does not pay', 'responses are not proportionate' and 'remediation requirements are not addressed properly'.

- 10.1.20 The information provided by the EPA on enforcement is not confidence inspiring. The practice within EPA reports of including court costs in the total of penalties allocated is seen as distorting the view of how much of polluters have actually been fined. Additionally the presentation by the EPA of data on the number of enforcement actions taken, in the absence of real contextual information on the number of breaches and complaints that occurred, is again seen as avoiding real performance measurement and assessment of the performance of the Agency's enforcement wing. For examples see the summary to the EPA's 'Focus on Environmental Enforcement in Ireland, 2006-2008'\*
- 10.1.21 The complexities of the relative responsibilities of the NPWS and the EPA can cause particular issue in pursuing effective enforcement or compliance. As the relationship complexities can complicate effective qualification of environmental damage, and associated pursuit of polluters and remediation specification and control thereof. This is particular frustrated with delay incurred by and between these agencies which has sometimes resulting in offences being statute barred. The relative roles of these agencies need to be resolved and their interaction on environmental management optimised.
- 10.1.22 There is an absence of an investigative and multi-agency approach in building and mounting cases against offenders. The recent exposé by RTE's Prime Time Investigates team in uncovering and documenting the issues with tyres and the exploiting of recycling initiatives, and the operation of unlicensed and illegal dumps, is a useful model for showing what a concerted investigation can uncover and highlight. The programme identified the associated environmental damage and the major fire hazard presented in the heart of residential communities on this activity; and it was seen to draw a sharp and unfavourable comparison with the role of the enforcement wing of the EPA. This is clearly an area where the resourcing and the remit and function of the EPA needs to be reviewed and improved.
- 10.1.23 Concerns have also been raised about the level of preparedness and familiarity of the EPA with the proceedings and case materials when it takes court actions.
- 10.1.24 The 'cost of taking cases' is perceived as a disincentive to the EPA in pursuing offenders and a model whereby cost cannot be awarded against the EPA if it loses should be considered.
- 10.1.25 The EPA needs to be more incentivised to pursue compliance and enforcement.

10.1.26 The EPA enforcement agency does not pursue the EPA itself for not proactively ensuring operators are acting under license, or that licenses are appropriately configured so as to limit environmental damage. These are both areas which the enforcement wing of the EPA should address in the future.

10.1.27 Fines are not seen as a deterrent. The existence of persistent offenders and the extent of damage to our environment, habitats and species is testament to that. The extent of pollution in our waterways is sufficient indicator alone of the extent of pollution being incurred in just one environmental element.

10.1.28 Resource constraints have been cited by the EPA as an underlying constraint to its ability to pursue compliance and licensing requirements. Such concerns and restraints need to be explored and revisited in light of priorities and focus areas.

10.1.29 Notwithstanding the point raised earlier in relation to point source pollution pressures from IPPC facilities, there is some sense the EPA has been more effective in addressing points of gross contamination from point sources. However the greater challenge is on how to address more diffuse pollution from agriculture and septic tanks for example. This requires a different approach and is necessary particularly if the contamination of ground water which is so problematic in Ireland is to be addressed.

10.1.30 Lack of awareness in the public at large of the extent of environmental pollution in Ireland is seen as inappropriate. Greater public awareness and engagement is seen as essential to any concerted or realistic effort to address environmental protection and redress environmental damage nationally.

10.1.31 Significant issues pertain to the approach to the Water Framework Directive and we would be happy to elaborate further on these at a later date – in the interim a number of points are offered below to highlight some of the areas of concern:

- The deficits in the approach to engaging public participation and the levels of same
- The underlying cultural issues within departments and agencies involved
- The problems associated with achieving effective engagement across departments and agencies in determining the impacts of the directive on their 'business' and responding appropriately to these
- The over-dependence on hard engineering solutions consequent on the more traditional engineering skill-sets available within Government Departments and agencies, lack of understanding of the opportunities and synergies presented by environmental engineering opportunities to address

flood and water quality issues with wetland rehabilitation and creation for example

- The reluctance to acknowledge deficits in models and information gathered land lack of transparency with regard to gaps in data and the vulnerability of underlying assumptions
- The lack of effective consultation and the fundamental cultural shift required to take on board and participate in consultation and joint solution building
- The over-reliance on external consultancy and associated poor leverage of opportunities to build necessary in-house expertise with the funding provided
- The lack of ownership of the plans produced by those who will be charged with delivering them
- The lack of realism in the delivery mechanisms specified
- The lack of recognition for trans-boundary considerations in the overall governance and delivery mechanisms to address water quality in rivers which traverse multiple local authorities
- The conflicts of interests ignored or not resolved in the context of Local Authorities being charged with improving water quality in their areas, but the self-same Authorities being funded by development-levies from development which frequently runs counter to water improvement requirements; and where authorities frequently have been the biggest polluter
- The lack of confidence in the underlying approach consequent on deeply controversial and conflicting findings – e.g. the Avoca river case where two conflicting reports have been produced with widely divergent claims as to the cost and time-frames required to address the pollution in the river, namely deviations of circa €33.5 million versus €3.5 million and 17+ years versus 1 year, not to mention the absence of consideration of flood management requirements in the initial expensive study ,
- The underlying confidence issues that this have been created by the frustration of 'Access to Information on the Environment Requests' regarding the above mentioned controversial Avoca River report.
- The lack of clarity about how these management plans are going to be delivered and funded and most critically what will happen to whom when the required targets are not met and who, if anyone, is actually incentivised to deliver.

All of these issues serve to highlight the need for a reusable framework to facilitate implementation of directives, with the need for an impact assessment of a Directive across multiple departments and agencies, with the consequential:

- Specification of a total set of 'change requirements', which are informed and based on a realistic transition strategy.

- Specification of an associated implementation plan. Such implementation plans need to include appropriate measurement and delivery controls to monitor delivery of intermediate outcomes, address delivery risks and appropriately incentivise delivery of critical outcomes; and mechanisms to adjust the programme accordingly.
- Delivery Management.

The pillar would welcome an opportunity to explore this requirement more fully with the Review Panel and to consider the implications this would have for the EPA.

In brief there are concerns regarding the 'deliverability' of the Water Framework Directive plans, and the role of the EPA in supporting this in the future should be explored.

Additionally the wider issue of the EPA's role in supporting the implementation of environmental directives should also be explored.

## 11 Consultation Queries: Responses and Conclusions

As in previous sections, the specific queries raised in the consultation document are addressed here in the context of findings documented above. These are framed in grey and in italicised text.

*Q. Within its remit, how good is the EPA's track record in ensuring compliance with environmental legislation and/or licenses and permits issued by the Agency?*

### **Conclusion & Response**

There is no sense of there being an effective environmental enforcement regime in Ireland either through the EPA's enforcement wing, or through the interaction of multiple agencies to ensure compliance with environmental legislation or licences or permits issued by the EPA.

Extensive pollution of our surface and groundwater bodies, for example, is but one empirical indicator of this poor enforcement regime. The EPA itself is not viewed as compliant with environmental legislation, and it is not seen as an agent or to operate in an overall framework which ensures 'polluters pay' or that 'remediation is addressed or that proportionate and effective enforcement is undertaken.

The fault for this lies not just at the door of the EPA, but is also consequent on the multiple factors including the legislative framework open to it in an Irish context; the judicial framework in which it operates; and the political pressures and other interests to which it is subject and vulnerable to. Ultimately the lack of a credible investigative, cross-disciplinary, and multi-agency approach within and associated with its enforcement wing - testifies to a fundamental lack of focus and application in the pursuit of polluters and those who are non-compliant with the legislative and licensing requirements.

*Q: Given the financial risks to Ireland for failure to ensure compliance with EU environmental Directives and the economic, social and environmental costs of a degraded environment, what changes might be necessary in the Agency's role, function or powers to improve levels of compliance?*

### **Conclusion & Response**

**There is a need for a complete overhaul of the environmental enforcement regime in Ireland across a number of dimensions** – some of which are outlined in our recommendations. It should be noted that these recommendations are specified in the light of an identified need to improve the enforcement & compliance regime in Ireland – but that it does not follow automatically that such recommendations should fall automatically to the EPA. **The oversight and controls required to allow for the confidence necessary to any extension of the EPA's powers is a matter the Environmental Pillar is anxious to explore more fully with the Review Panel.**

*Q. What changes (i.e., new powers, structures or process etc.,) might be introduced to strengthen the Agency's ability to ensure compliance with environmental legislation?*

### **Conclusion & Response**

In response to this we would re-iterate the remarks presented above in relation to new powers, structures, and process necessary to ensure compliance, with particular emphasis on the need for proper transposition of environmental legislation and implementation thereof starting with the review and subsequent alignment of Government Strategy and policy and that of its departments and associated agencies with same and similarly for their compliance with international conventions and environmental standards.

As a more specific response to the question raised about the agency's ability to ensure compliance with environmental legislation - the challenges presented most recently by the efforts to grapple with the massive and far-reaching implications of the Water Framework directive provides for a useful case study in

examining Ireland's approach to implementing a directive and the particular issues and challenges and problems that have arisen; and the gaps in requirements to deliver on such an exercise. It may be useful to explore the role of the EPA in the context of such an exercise and the challenges and successes presented.

While many aspects of the undertaking to implement the Water Framework Directive have received positive comment – much of this has been offered in relative terms – i.e. the implementation approach was seen as more systematic and methodological than that taken to other directives.

However significant issues pertain with the approach to the Water Framework Directive.

We have made further specific and detailed recommendations in relation to the enforcement and compliance regimes within our sections on recommendations. These address a wide range of matters from the provision of extended powers and functions to the EPA's enforcement unit, a complimentary environmental list within the courts, reform of penalties, and better engagement of the public and other agencies would be just some of the recommendations made later below.

## 12 Stakeholder Relationships:

### 13 Findings:

13.1.1 The ultimate customer and stakeholder for an Agency charge with 'Environmental Protection' is of course the Environment itself – with all other parties effectively being 'users' of that resource or system. The environment is the ultimate shared resource and one on which we are ultimately dependent on and whose health should therefore be our priority. However there is no sense that the Environment is seen as 'The Customer', or even a preferential stakeholder by the EPA, or that licensed operators are 'users' of environmental services or resources.

13.1.2 The role of an Agency charged with the brief of 'Environmental Protection' should therefore be to manage on behalf of 'The Customer' - the demands and relationships of those users of, be they the public at large, or licenses who are subject to regulation etc. It is clear that Ireland's EPA do not have such a perspective and views instead the licensees as its customers, together with the Government, the agency itself, and to a lesser extent the public at large.

13.1.3 It is also significant to note that in the consultation document itself - the focus on stakeholders again was only detailed in those limited terms namely those:

*"subject to regulation; the public on whose behalf regulation takes place; the many public bodies who contribute to, or are affected by the process of environmental protection; and counterpart environment agencies in neighbouring jurisdictions and operating at EU and international levels."*

13.1.4 This is a fundamental point. The perspective of the environment as the customer and the preferred stakeholder is essential to the overall configuration of priorities and focus of an Environmental Protection Agency. The lack of such a perspective, we would contend, results in many of the issues with the current system, where requirements which result in economic and social considerations are being consistently prioritised over environmental concerns and at the expense of the environment. This necessitates a sea-change in attitudes and associated behaviours and choices, and a need to put environmental considerations to the fore in decision- making

**Note: It is only in the context of this overriding caveat that the questions posed in this section of consultation document are addressed**

*Q. Has the EPA been successful in meeting the appropriate expectations of stakeholders and regulatory partners in the delivery of its functions?*

Notwithstanding our over-riding concern that the environment should be seen as the ultimate stakeholder for an Agency charged with the title of 'Environmental Protection Agency' - the following comments are offered in relation to the EPA's engagement with Stakeholders:

*The Pillar / ENGO's:*

It should be noted that members of the Pillar did acknowledge positive personal relationships within the EPA.

However as a body, the Pillar did not feel the EPA as a corporate body values it as stakeholders. For example in the context of the scale and complexity of environmental challenges which Ireland faces, the reduction in meetings between the EPA and the sector's representative bodies to once a year – signals for many the absence of any vision or desire for partnership by the EPA with the ENGO sector in general, and in particular in addressing these major challenges. The omission of ENGOs from the speakers invited to speak at the excellent climate change sessions convened by the EPA last year was seen as significant and inappropriate.

The manner of these annual meetings when they take place – is not seen as facilitating or trying to engender a working relationship. They typically take the format of extensive PowerPoint briefings and presentations on what has been decided or what has been done. These sessions are not focused on building a working relationship, nor are any other targeted relationship-building exercises undertaken by the EPA toward the Pillar.

The follow-up on any issues raised by the ENGOs at these sessions or in other fora is viewed as poor. This serves to create the underlying view that the EPA does not rate the ENGO sector as a stakeholder which it needs to service or a partner which it can work with in achieving mutual objectives. It appears that engagement is managed on more of a mere compliance or 'tick-that-box' basis.

*International Stakeholders:*

In relation to addressing the appropriate expectations of international stakeholders, the lack of participation at successive UNEP Governing Council meetings was criticised. The lack of advocacy on the negative environmental impacts of Ireland's poor transposition of EU Directives and the consequential non-compliance with our international environmental obligations in particular pertaining to biodiversity management was criticised. Such lack of advocacy may be consequential on the

remit and constraints of the EPA as it pertains – but such advocacy is seen as appropriate to fulfilment of the mission statement and to live up to the implication's of the Agency's title.

The Measurement, Reporting and Verification, MRV system is seen to be on a par with that of other European countries. However the focus of the system could be enhanced to address reduction in our emissions rather than reduction in our liabilities, and thereby provide a better contribution to our international stakeholders and our responsibility to them.

The engagement of multiple high-profile international speakers to address the climate change sessions convened last year was seen as a very positive activity by the EPA.

*The Public at Large:*

The lack of effective engagement of the public at large with the work of the EPA and the overall state of the environment – are seen to reflect poorly on the EPA's servicing of the public as a stakeholder.

The physical locations of the EPA's headquarters and the lack of public transport and linkages to it are seen as indicative of how accessible it wishes to be, or not be, to the public at large. This view is compounded by the lack of facilities for the public when they visit. There are no canteen facilities available to the public unless expressly invited by EPA staff. Queries from visitors as to 'where can I get a cup of coffee?' are responded to with directions to a local town some 20 minutes away.

The absence of any mention on the EPA's website of the current review procedure of the EPA was seen as significant. Such an omission does not provide a positive signal, in terms of the Agency's desire to be held accountable, or to listen to the assessment of its performance by its stakeholders.

The engagement of only one CSO or ENGO in the National Allocation Plan consultations, and the lack of engagement by the public at large in this process is seen as significant, particularly in the light of the unprecedented significance of this undertaking for our climate change planning. Clearly fault lies across both sides of the equation for this lack of participation. However the fault for the general lack of awareness regarding the consultation, and the significance of it, must lie with the EPA itself. The EPA must be seen therefore as being ultimately responsible for the poor participation experienced.

The fact that the second NAPS process did not even seek to notify the one ENGO that had participated in the first NAPs round, was seen as disappointing and not appropriate. Particularly when the ENGO had established their credibility by highlighting concerns which were subsequently also reflected in concerns raised by

the Commission itself. Again this serves to create the impression that the EPA does not wish to service a wider stakeholder group. In this particular example the implications are very significant in that appropriate efforts were not seen as being made to ensure that consultation facilitated the development of an informed and considered National Allocation Plan – necessary to deliver on our international obligation, and which people felt confident in and joined to.

The recent issues with the Galway water supply, both in terms of the use of lead pipes and cryptosporidium outbreaks, testify to the effective 'breakages' in our environmental governance systems. These systems are compromised in identifying and addressing threats appropriately, and in delivering positive environmental outcomes, and in managing the quality of critical resources for the public at large. The role of the EPA in these matters needs to be considered and examination of the Galway water crisis should be examined with a view to identifying areas for improvement.

#### *The Licensees:*

It is more difficult for us to comment on the EPA's fulfilment of its licensing customer's expectations. However the perception is that the EPA views itself first and foremost as a licensing agency. This is understandable in the context of its original remit.

By not actively pursuing un-licensed activity and allowing for un-licensed operators to have a lower cost base and as consequential competitive advantage, the EPA is not seen as addressing the interests of its licensed customers either.

#### *The Government*

The EPA is not seen as living up to its responsibility to challenge Government policy and to act as a fair, impartial and balanced advisor to Government on environmental matters.

#### *The EPA staff*

The genius of any organisation lies in its people. There is a concern that highly expert people who have been passionate about the environment appear to become de-motivated over time once joining the EPA. The truth of this and its potential extent is unclear. Concerns have been expressed that the restrictions in the remit of the EPA may serve to frustrate people in delivering a positive impact, and the extent of fragmentation and division in the organisations functions may serve to detach people from any sense of their contribution to the 'big picture'. Additionally, resource constraints were suggested as a further possible issue. It would make sense to qualify the employee's own views. Therefore it is recommended that an externally conducted employee survey be conducted to assess staff satisfaction, their levels of motivation, and their sense of empowerment to deliver positive

environmental outcomes, and to contribute effectively to environmental governance. The findings of such a survey should drive a set of recommendations to address issues which emerge, particularly in the context of the recommendations of the review panel.

**Conclusion:**

The EPA is not seen as delivering effectively for its stakeholders or engaging with them effectively in the main.

An Agency charged with the title of 'Environmental Protection Agency' should view the Environment as its primary customer and stakeholder.

What needs to be decided now is whether the EPA is in fact an 'Emissions Licensing Agency' with Information & Research services; or is it to evolve to become a fully functional agency to 'protect the environment'.

Having answered that we then need to see what further structures are required to ensure oversight of its functions, and what gaps remain for the advocacy for the environment, and to drive the level of changes required across our governance systems and bodies.

*Q. Do significant structural, operational or other barriers exist which impede/inhibit the Agency's ability to achieve optimal environmental outcomes through working in partnership with key stakeholders?*

Comment has been made in response to other sections about a number of changes required to achieve required environmental outcomes, and these should be considered as read in response to this question.

In addition to those matters articulated elsewhere in this submission; the lack of resource provided to the NPWS is seen to constrain the ability of the NPWS to engage meaningfully in consultation with the EPA in relation to biodiversity considerations.

There is an acknowledgement for the significant levels not only of expertise but of localised knowledge within the NPWS. Equally there is strong frustration with the administrative and management focus and lack of real appreciation for biodiversity considerations in upper levels of the service. The matter of the relative allocation of responsibilities for biodiversity across the EPA and the NPWS needs to be resolved as a priority.

The emergent role of the National Biodiversity Data Centre and what it is - and more importantly what it is not needs to be clarified, as a lot of expectation is being generated around about how this solution will 'plug some of the gaps' in the management of Biodiversity considerations. Outstanding issues with the population of information to that database, and also the availability of sufficiently expertise willing to engage with it to maintain the database and the practicality of its quality control mechanisms also need to be considered.

Similarly the issue of An Taisce as the only prescribed body for consultation on EPA licences needs to be addressed – particularly in terms of appropriately supporting An Taisce's ability to fulfil such a consultative role across the broad range of considerations An Taisce is concerned with, and the specific expertise required to review technical license applications. There is also a need to formalise further requirements for required consultation across a number of other agencies - such as Fisheries, NPWS etc.

The timeframes provided for consultation on licences need to be revisited in the light of the volume of information these agencies are required to process across multiple applications, in order to facilitate them being able to respond and inform the decision making processes.

**Conclusion:**

Significant structural, operational and other barriers exist which impede/inhibit the Agency's ability to achieve optimal environmental outcomes through working in partnership with key stakeholders.

*Q. In an era wherein public engagement is fundamental to effective environmental protection, how successful has the Agency been in supporting citizen participation in this process?*

We view the public as effectively unengaged by the EPA. A number of comments have already been made in relation to the wider query above on stakeholders. We would supplement these remarks in the context of this particular question, by commenting on the lack of impact the information and assessments provided by the EPA have in engaging the public and capturing the public imagination and support.

Information and Statements in the Assessment reports are not stated in a sufficiently compelling way so as to create an appreciation of the impact of one's personal activities on the environment, and to consequently inform behaviours and choices.

The delivery mechanisms employed for environmental information – are not seen as appropriate to the engagement of the public at large. The EPA issues press statements about reports it issues which are available on its website. The public at large are not going to download chapter by chapter a PDF document on the 'State of the Environment'. Nor are they going to spend €20 to buy an assessment report to find out - 'where we are at' environmentally speaking, and what needs to be done! Putting something on a web page does not constitute engagement of the public in environmental outcomes. This appears to be the primary mantra and approach by the EPA to public engagement – with the response that 'it's on the web' being viewed as sufficing to deliver on their requirement to engage and inform the public.

In fairness, there is a lack of clarity in the responsibilities of the EPA in the engagement of the public in general, particularly with reference to major environmental considerations such as climate change. For example initiatives such as 'Change.ie' are driven independently from the DOEHLG; while the EPA controversially supplements the production of a commercial organisation's TV programme, namely Eco-Eye, which is seen as being a very 'soft-message' and not fit for the purpose of the level of environmental challenge the country, and indeed the planet, is faced with. The role of the EPA on public engagement on such matters must first be clarified and then targeted appropriately.

A specific example of lack of public awareness on environmental matters is water quality. Despite the major undertakings completed to assess our water quality as part of the Water Framework Directive, there is no national appreciation of where Ireland stands on water quality. Information is localised and appreciation of issues with water quality too frequently only occur when boil-notices are issued or supply is interrupted.

Additionally appreciation of the state of our natural environment, the extent of invasive species and the percentage loss of habitats or decline in species are not matters which the public is up to speed with. Nor have they any wider appreciation of the significance of these matters in determining the health of our environment.

There is no understanding in the public at large in relation to the quality of our air, or of the health impacts of certain emissions on asthma and other respiratory conditions. Our contention would be that out of self-interest alone – greater awareness of the negative impacts of emissions would serve to influence and change behaviours. It would serve to also influence consumption patterns such as transport arrangements. It would influence issues raised on the doorstep with politicians and thereby ultimately feed into and reinforce positive environmental outcomes. However none of this is enabled as the public is not being effectively informed or engaged by the EPA or indeed any other agency.

**Overall Conclusions:**

**The EPA does not view the Environment as the ultimate stakeholder or customer in its operational model.**

Other stakeholders such as ENGOs focused on prioritising positive environmental outcomes are neither serviced well as stakeholders nor engaged as partners by the EPA in delivering positive environmental outcomes.

There is a need to support other stakeholder agencies in their engagement with the EPA not only in terms of the Agency's decision making frameworks, but also in its compliance and educational remits. There is a lack of clarity in the relative responsibilities between the EPA and the NPWS in particular for Biodiversity outcomes, and this is to the detriment of same.

The public at large are neither engaged nor empowered by the EPA and the information it provides.

The status and operation of the stakeholder network is poor, and serves to undermine the EPA's ability to protect our environment as a consequence.

## 14 Environmental Monitoring and Research:

The findings associated with the Pillar's review of the EPA and Environmental Monitoring & Research are set out below in sub-section 7.1 Findings. The specific queries addressed in the consultation document are then addressed in sub-section 7.2, together with conclusions.

### 15 Findings:

15.1.1 Comments were generally positive in relation to the EPA's remit to address and fund research.

15.1.2 Research is seen as critical to ensure policy is informed and not operating in a vacuum.

15.1.3 A greater emphasis on the Internationalisation of research is needed. There is also a need to promote research on the localisation of various proposals, and to take into account considerations to the Irish environmental context such as our rainfall, soil permeability, temperature ranges etc.

15.1.4 The Climate Change presentations last year and International Panel on Climate Change seminar hosted this year were viewed extremely positively. It was noted with regret however that the climate change presentations did not include any speakers from CSO or NGO organisations.

15.1.5 Concerns were expressed over the level of post-grad focus for the research programmes funded by the EPA. A concern was expressed that the requirement to provide jobs for post-grads was overly-influencing the type of research being performed and restricting the availability of funding to other applicants. Additionally research funding was seen as less accessible to NGO's in particular given the terms and conditions imposed on same. This is consequent on a number of factors including the payment models employed by the EPA. The practice of paying in arrears for research presents poorly funded NGOs with cash-flow problems in addressing research activities. It was noted that improvements had been made in the research model extended to SME's. However more flexibility is needed to enable NGOs participate on a more equal footing in research programmes. Compliance conditions were also seen as restricting the engagement of other practical and experienced professionals. For example individuals who are self-employed may find it difficult to be seen as compliant with the requirements which

look at determining overall focus and benefit from the research and this may restrict their engagement and limit the benefits to the research arena associated with professional experience.

- 15.1.6 Differing perspectives were encountered on the inclusiveness, openness and effectiveness of 'call-outs'. The STRIVE was noted positively in relation to consultation on the both the scoping of the programme and publicity around it. The NAPS programme in contrast was noted negatively in terms of the lack of effective publicity and engagement. These concerns were detailed earlier in the section on stakeholders. More consistency and openness is therefore recommended.
- 15.1.7 There is a need to clarify the frameworks for deciding on and selecting funding proposals. This is in order to provide greater transparency with decisions. It also necessary to ensure that priority areas are being identified for research and that the ultimate of objective of optimising or informing environmental outcomes is kept in sharp focus. Such requirements arise out of concerns that climate research funded by the EPA is more focused on reducing liability through inventory – rather than by emissions.
- 15.1.8 There was strong variation in the views expressed over the availability of outputs from funded research. There is a sense that in the past this was more of an issue, and that specific steps have been taken to provide that outputs from research be made available and used to update other databases such as the National Biodiversity Data Centre. This is a positive step to redress past issues. Easily searched indexes on the EPA website to the research should also be provided.
- 15.1.9 The EPA's role in monitoring and providing monitoring information is seen as critical. Where the EPA collates the data itself there was greater sense of transparency and clarity on the underlying assumptions or constraints associated with the data. This is as opposed to other areas where the EPA merely presents the information of other agencies – where there is less transparency and clarity on underlying assumptions.
- 15.1.10 Monitoring data in relation to biodiversity is seen as poor in comparison with other areas and not satisfactory. The responsibilities for re-dressing these deficiencies need to be resolved.
- 15.1.11 Alarming results or issues noted in monitoring data are not seen as driving policy at Government or Agency level, or prompting greater regulation or compliance efforts by the Agency. There is a clear view that only the threat of EU enforcement and fines for non-compliance - drive any concerted action and policy in Ireland's governance frameworks.

- 15.1.12 The credibility and usefulness of monitoring data collated in determining environmental impacts and emissions has been questioned. This is specifically in the context of data from monitoring stations not reflecting the additional emissions associated with other facilities in the area which are unlicensed. The example of peat extraction operations which exist side by side was highlighted in this regard.
- 15.1.13 There are significant deficits in the collation and provision of information on the compounds associated with IPPC licence facilities; with a need for greater provision of background data so that incidents can be appropriately contextualised and assessed. Bio-monitoring of the Irish Population for such compounds is also needed.
- 15.1.14 Monitoring data within Cancer and other disease registries is inadequate. It does not support our ability to make meaningful associations and identify correlations between environmental factors, exposure levels, and incidences of diseases – with a view to informing appropriate responses and policies.
- 15.1.15 There is a need to improve the capability to monitor dioxins in real time to reduce the human health and wider environmental risks associated with exposure to such substances. The current mechanisms provide an unacceptable risk because of the lag in determining levels.

## 16 Consultation Queries: Conclusions & Responses

*Query: The panel seeks views on the EPA's performance in monitoring and as a promoter of research on the Irish environment.*

### **Conclusions & Response**

In general terms the EPA's role is viewed positively in terms of promoting research and performing monitoring of the Irish Environment.

There is however room for improvement on the research front. Particularly in terms of broadening out the availability of research funding to NGO's; and removing obstacles to the leverage of professional expertise in research initiatives. There is also a need for providing greater transparency in research funding decisions; and especially in ensuring research funding is aligned with the need to support optimal environmental outcomes – rather than political or sectoral agendas. The availability of outputs from funded research has been improved and needs ongoing and further focus.

The provision of Monitoring data for Ireland is critical and significant deficits exist in the data provided on Biodiversity and human health. There is no bio-monitoring of the Irish population for the compounds associated with IPPC licences, and monitoring of normal background environmental levels. Other areas of monitoring which need further focus include the creation of effective disease registers & environmental surveillance systems which can facilitate collection of associations and correlations and the relative responsibilities for addressing this need to be resolved.

There is a need for the ongoing evaluation and assessment of the relevance and value of monitoring information collated in determining environmental impacts. There is also a need to ensure up-to-date environmental standards and thresholds applied to the interpretation of the monitoring results gathered.

Data concerning the state of the environment is not seen as sufficiently informing the design of Government or Agency policy. It is also not seen as targeting regulatory effort. Public confidence in both processes is seen to suffer as a consequence. There is a clear view that only the threat of EU enforcement and fines for non-compliance drives any concerted action and policy in Ireland's governance frameworks.

## 17 EPA's role in environmental assessment:

### 18 Findings:

- 18.1.1 The implication of the assessment remit of the Agency is seen as critical in the effective and objective interpretation of data from various sources in arriving at conclusions about the state of the environment.
- 18.1.2 The assessment reports provided by the EPA are viewed as an incredibly important and useful resource in the main. The EPA provides a valuable role as a collator of data on the Irish environment.
- 18.1.3 Assessment information on Biodiversity is seen as deficient. It is not satisfactory in determining the overall status of species and habitats in Ireland in general.
- 18.1.4 The credibility and attention afforded by the media to the data provided by the EPA is seen as very powerful and should be leveraged more.
- 18.1.5 However the presentation of assessment information is of concern for a number of reasons including:
- a) There is an absence of context for much of the statistical data provided. This gives rise to either distorted or potentially misguided views of our environmental performance. For example a statistic which states overall recycling levels have been increased by 80% sounds positive. However if positioned in the context of the overall amount of waste still being produced, or the volumes of waste being land-filled, or whether the waste collected for recycling is in fact being recycled; the perspective and underlying message would change. The selection by the EPA of such 'positive spin' statistics in summaries or press-releases is viewed as inappropriate, in the context of the agency's wider responsibilities to inform us of the true impact of our activities.
  - b) There is an absence of consideration of monitoring and statistical information gathered in any international context. For example no comparisons are given in the main to describe our consumption or waste patterns within a range of international comparisons.

- c) The information presented by the EPA is not delivered in sufficiently compelling terms. There is no effective 'call to arms' to mobilise people or to excite or engage them. Its presentation style is contrast with the information presented in the Global Footprint Network publications.
- d) The assessment information is not presented intuitively, or in forms which are easily assimilated. Clearly there is a need to service multiple audiences with multiple perspectives and varying demands. In fairness, the needs of the more technical and scientific audiences are seen to be in the main well-served. However the needs of the ordinary member of the public, or those wishing to get an overall sense of 'how we are doing and why', have little option but to wade through and digest multiple reports and to compare and qualify different pieces of information provided across the assessment reports.
- e) The information provided through the EPA is not re-delivered or re-digested into appropriate mechanisms or communication channels to really influence or change behaviour of the public at large.
- f) There is little information provided on the environmental impact of the operation of major land-owning semi-state bodies such as Bord Na Mona and Coillte. There is no influence or moderation, from an environmental management point of view, therefore of the commercial rules governing them.
- g) There is no drill down capability associated with the information presented to assist in the identification of potential negative or positive contributing factors and in so doing assist in the informing of environmental policies or actions.
- h) The information is not seen as being used to signal or drive greater enforcement or regulatory or compliance activity by the agency
- i) The information is not used to drive checkpoints on Government policy, either in terms of evaluating the success of existing policies and strategies; or in meaningfully assessing the potential environmental impacts of proposed plans, projects or programmes. The use of the SEA process on certain land-use plans is seen as mere 'window-dressing' when viewed in the context of the silence of the EPA on major Government programmes such as the Greenhouse Gas and climatic impacts of the Transport 21 major road building programme and the National Development Plan in the main. Such selective application of SEA and lack of consideration for COP 6 of the International Biodiversity Convention is not appropriate for an Agency charged with environmental protection.

It is worth considering what the EPA says and what it does not say. For instance, the Summary section of the most recent State of the Environment Report – 'Ireland's Environment 2008' is a useful example. The section of text

below in relation to climate change is included in its entirety. We would urge this section to be read in the context of knowing that between now and 2015 - an additional 850km of road is planned, as well as a Dublin-Derry dual carriageway, and that no assessment of cumulative direct and indirect environmental impacts of this overall transport plan has been undertaken by the EPA or any other state agency under either European SEA directives or other international conventions. Such omissions are a signal testimony to the lack of environmental governance of Policy in Ireland. The words below from the EPA hint all too softly at what needs to be done. However, the EPA remains effectively silent and offers no forthright criticism or clear statement of concern regarding the incompatibility of Government proposals in the context of our climate change responsibilities. The EPA does not provide leadership in rallying a wider network to address this matter either.

Please note the emphasis has been added to the text below extracted from the State of the Environment report

State of the Environment Report – 'Ireland's Environment 2008'  
Summary Section extract:

### **Limiting and Adapting to Climate Change**

#### **Climate change is recognised as the greatest threat to the planet and the greatest challenge facing humanity.**

The challenges for Ireland are similar to elsewhere. The first challenge is to achieve significant reductions in emissions of greenhouse gases in the period up to 2020 and beyond. The second is to minimise the impacts of climate change in Ireland. Finally, to achieve an improved understanding of climate change, the challenges it poses for this country and how these can be met.

Ireland faces a significant challenge to meet its targets both under the Kyoto Protocol in the period 2008–2012 and under the EU burden-sharing target for 2020 and beyond. Current projections show that even if all anticipated reductions from existing and planned policies and measures are delivered, Ireland will still exceed its Kyoto Protocol limit. **Ireland needs to reduce its dependence on fossil fuels** and at the same time ensure that significant increases are made both in energy efficiency and in the use of alternative energy sources such as wind, ocean and biomass. **To achieve the 2020 target will require radical changes to current practices in all economic sectors, particularly those in energy and transport.**

The nature of climate change means that even if greenhouse gas levels were reduced now, some climate change impacts are unavoidable. Responding to the impacts of climate change will require a concerted series of adaptation measures. **A greater frequency of flooding events and drought periods is among the anticipated impacts of climate change. Future investment decisions at national, regional and local levels must incorporate adaptation measures, addressing flood prevention and control as well as greater management of water resources (e.g. for drinking water supplies).**

Underpinning the country's ability to implement measures to limit and adapt to climate change effectively is an improved understanding of climate change. Continued research is required to understand better how Ireland's climate will change, its impact on business (e.g. agriculture) and society generally, developing innovative technologies for reducing emissions and in particular, producing energy from low emission sources as well as **devising climate-proofed planning and public policy measures.**

The constraints for the operation of the EPA given the historic context of what has happened to Duchas; and even more recently the effective emasculating of the Equality Commission when it conflicted with Government policy; are matters which have to be addressed. The effective insulation of an agency charged with the protection of the environment from political backlash is essential. But at the same time there is a need to allow for some oversight and accountability of the Agency's performance

Additionally, there is a complete and acknowledged absence of environmental considerations in the recently drafted strategy from the Government commissioned Innovation Task Force (ITF). This very recent task force is charged with generating economic recovery and growth. This omission of the environment or any consideration of it in their proposed 'innovation ecosystem' is a further sad testament to the Government's lack of real commitment to the environment. The effective silence of the EPA on this omission - serves as an eloquent mirroring of its role in formulating environmental policy in Ireland - in effect there is nothing reflected!

## 19 Consultation Queries: Responses and Conclusions

*Query: Assessing the present status of the environment, the success of existing policies and strategies and the potential environmental impacts of proposed plans, projects or programmes is a central element of modern environmental governance. As the key provider of environmental information in Ireland, the EPA plays a central role in assessing potential environmental impacts. The panel welcomes submissions concerning the Agency's performance in providing environmental information for assessment purposes and in contributing to the process of environmental assessment overall.*

### **Conclusions & Responses**

As the key provider of environmental information in Ireland, the EPA is positioned to play a central role in assessing potential environmental impacts; and to drive and influence Strategy at the Government level and behaviour at the individual level. While useful assessment information is provided – it is neither optimally presented, nor digested, nor utilised in such way as to drive the environmental agenda in Ireland at either individual or Government level. The EPA fails therefore to deliver on the assessment of potential environmental impacts; and fails to contribute as a central engine driving environmental governance in Ireland.

The relative lack of focus within the 2020 Vision Statement of Strategy from the EPA on biodiversity – serves to further underline the EPA's deficits in this regard.

## 20 The EPA's as a provider of environmental information:

### 21 Findings:

21.1.1 A number of findings detailed in relation to Environmental Monitoring & Research and Assessment activity – also pertain to the EPA's role in information provision and these should be taken as read here.

21.1.2 As might be expected, the perspective and assessment of the EPA's performance on data provision varied with the level of scientific expertise and specialities of the Pillar interviewees. In general the information provided by the EPA is well regarded; with sufficient volumes, coverage, and currency of data being provided; across a variety of technical requirements and forms.

21.1.3 No major gaps were noted with the information provided, with the exception of the serious concerns raised about deficiencies in data on biodiversity in terms of the level and quality of monitoring undertaken and the information available. The concerns of the OECD on Ireland's lack of focus on biodiversity were noted.

21.1.4 A broader concern was raised in relation to all the underlying issues which led to the compromised quality of drinking water in Galway in recent years. Clearly a number of systems failed, including environmental protection systems. Public interest was completely compromised as a result. All the underlying systems which should have collected, received, interpreted and responded to the escalating crisis need to be examined and reformed. All aspects of the system including those which existed and which didn't need to be considered – some of the key considerations would include:

- The effectiveness of monitoring data collected in the first instance
- Review of the systems and standards which should have:
  - Interpreted results and provided warning
  - Identified the underlying risks in the first instance
  - Monitored the escalating problem
  - Monitored the risks/causes - not just the resulting deterioration in quality
- The escalation channels
- The responsibility and accountability models

This would be with a view to initiating major reform and restructuring. The risks which completely compromised the water's quality were not sufficiently and effectively communicated to the public in the first instance, and any new system needs to ensure this will happen – so that matters will not be ignored until it is too late. The role of the EPA in this example needs to be assessed in terms of its performance against its particular remit in the area of water, and its performance against its wider remit of 'Environmental Protection Agency'; and also in terms of what is appropriate for it in the future given this experience.

21.1.5 The recent efforts to make available aerial and satellite imaging, which the EPA and OSI have had for years, were welcomed. The leverage of this resource in assessing environmental changes and the scale and nature of unlicensed activity in the future - by both the EPA and the NPWS in particular is to be encouraged.

21.1.6 Concerns were noted about how 'unfriendly' the EPA's system is in terms of reviewing licensing decisions etc.

21.1.7 Specific concerns were noted and sharply criticised about restrictions in access to the full extent of information on water quality collated as part of the programme to implement the Water Framework Directive<sup>14</sup> in Ireland. (For example ENGOs were among those on the management/advisory teams who were not given a password which would provide them with full access to the data. However other members of the team were given full access to the database. Additionally certain reports have been withheld. While the responsibility for such restrictions was not laid directly at the door of the EPA, in the future this is a matter which the agency will clearly have to resolve and redress.

21.1.8 The EPA is generally considered to be good at providing access to information. However the distinction between 'providing information' and 'providing data' was made. Frequently in response to a query the agency responds with extensive provision of data. This serves only to further obscure the pursuit of the requested information. That is not in anyway to undermine the importance of being able to access to raw data when required – but sometimes what is requested is simply an information request - which should result from an interpretation of, or be derived from, data. The EPA sometimes is seen to fail to provide 'information' effectively, or in a user friendly way. It is important to note that these concerns are raised in the context of what would be a reasonable request for information, and which one could reasonably expect the EPA to have created or create, rather than some obscure deduction requiring extensive analysis.

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14 DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000 establishing a framework for Community action in the field of water policy

21.1.9 The EPA is not seen as being particularly effective in ensuring licensees or other agencies comply with the requirements for on-site information requirements. This serves to create additional overhead for the public, and is also a first layer to poor-compliance and enforcement, and encourages a culture of poor accountability and transparency among licensees.

21.1.10 Specifically on the matter of monitoring of water quality - the more recent acknowledgement that the classification scheme adopted to address implementation of the Water Framework Directive is an 'interim scheme' is welcomed. This is particularly in the context of the extensive challenges that creation of such an assessment scheme presents. In brief the Directive requires a new approach to water quality assessment, namely an ecological assessment of the water's quality. Clearly the creation of such a scheme is a significant undertaking. Consequentially there are understandable gaps and issues with what has been derived. However what is not clear is:

- What are the limitations of the 'Interim Classification Scheme' in terms of acknowledged deficiencies and constraints
- What consequential implications for the assessment of a water body's quality result from the limitations of the classification scheme applied to them
- What mitigation / compensating actions and factors are being applied to limit the negative impact of deficient classification schemes
- How and when are the limitations to the classification scheme going to be addressed
- When will the revised scheme be re-applied to the water-bodies and the associated management plans be revisited as a consequence
- What will the EPA's role be in all of this, as this issue goes right to the heart of monitoring of water quality in Ireland

## 22 Consultation Queries: Responses and Conclusions

**Query:** *the quality of public access to monitoring and research data; and the quality of the link between policy formulation/review and the results of monitoring and research, and various queries in relation to the type and quality of information provided*

### Conclusions:

Conclusions and responses have already been covered in previous sections in relation to the quality and access to monitoring and research data; and the very poor quality of the linkages between policy formulation/review and monitoring and research results.

In addition to those earlier comments which should be taken as read for this section; the quality and variety of data sources provided is generally considered to be good; but the following areas were highlighted as being of significant concern:

*Biodiversity:* There is considerable dissatisfaction with the level and quality of monitoring undertaken and the information available, particularly pertaining to information on habitats and species and changes to them.

*Water:* Additionally a number of concerns have been expressed regarding unacceptable limitations of access to data held from work undertaken as part of the effort to implement the Water Framework directive. There is also a need to address the deficiencies of the interim classification scheme adopted to assess water quality under the directive in order to provide for an improved scheme. In the interim the implications of the limitations of the interim scheme on classifications made need to be addressed. These matters go to the heart of the monitoring of water quality in Ireland. The EPA's role in this matter needs to be clarified in terms of its past performance with a view to informing its future role.

*Galway Drinking Water Cases:* The recent Galway drinking water quality issues

e.g. lead pipes and cryptosporidium, need to be examined with a view to identifying the system failures which lead to such a collapse. The totality of the system needs to be examined because environmental protection failed and public interest was completely compromised as a result. Such a review should consider: the effectiveness of monitoring data collected in the first instance, the interpretation and warning systems, the escalation channels, the responsibility and accountability models - among other matters. This would be with a view to initiating major reform and restructuring. The risks which completely compromised the water's quality were not sufficiently and effectively communicated to the public in the first instance and any new system needs to ensure this will happen so that matters will not be ignored until it is too late.

The distinction between provision of information and provision of data has been noted, and the tendency of the agency to provide for the later when the former may have been requested - is of concern.

## **23 Evaluation of resource allocation in light of current and future obligations:**

### **24 Findings:**

- 24.1.1 There is generous acknowledgement of the extent to which the EPA's role has grown over the last years and of the need for it to be resourced accordingly, and of the levels of expertise required.
- 24.1.2 The Pillar is not in a position to really comment on the effectiveness of the EPA in managing its funding and resources as in the main there is insufficient understanding or information available to the group; and no time to research and evaluate this matter at this point.
- 24.1.3 The role of the EPA as a regulator and in ensuring our compliance with Irish, EU and International Law cannot be curtailed. To do so would incur further environmental risk and damage; and indeed significant and direct financial cost through fines from Europe for non-compliance – a consequence which Ireland is already facing.
- 24.1.4 It is more likely that the resourcing requirements for the EPA would grow rather than decline in the context of the extent of challenges to be addressed. While conflicts are perceived within aspects of its functions; there are complimentary skills and functions across the current set-up which probably yield efficiencies.
- 24.1.5 The EPA is seen as delivering, relatively speaking that is, a better service on licensing and water matters than Local Authorities. Coupled with the need for the 'policing' of the Local Authorities; it may be more financially and environmentally effective to assign powers and associated resources centrally to the EPA for certain functions heretofore dispersed throughout the Local Authorities. In turn those local authority resources could be leveraged to meet the increased complexities and standards required across the many aspects of Local Government now and into the future.
- 24.1.6 The environmental fund is an instrument to facilitate the effective compensating of the environment – and should not be subject to demands from non-environmental requirements.

24.1.7 The proposal that the cost of the inspectorate and enforcement division of the EPA to be borne by the sector, the industries and companies who are in receipt of licences has received a lot of support within the Pillar. The view is that those who benefit directly from the grant of license and permission to effectively operate and pollute our environment, and in so doing create profits, should bear the associated costs. There was also the view that it might facilitate an element of self-policing if a portion of the costs associated with enforcement was charged in arrears. As it would encourage operators to behave so as to reduce the prospect of this charge. However associated concerns have been expressed that the overall model might back-fire so to speak, in terms of compromising the specification and resourcing of that inspectorate through political and industry pressures – particularly in the current economic downturn.

24.1.8 There is inefficient leverage of resources and a lack of clarity for the relative responsibilities across agencies such as the EPA, fisheries and NPWS. This is seen to create some overhead, omissions, and in some instances duplication of focus across these agencies in their contribution to environmental protection. The very specific expertise and knowledge within the agencies needs to be better leveraged, and there is a need to review function and responsibilities to optimise the combined contribution of these bodies to environmental protection.

24.1.9 More effective leverage and allocation of relative responsibilities across agencies such as the EPA, fisheries and NPWS may serve to yield benefits in terms of greater productivity, focus and quality which will enhance the value for money equation of these agencies in contributing to environmental protection.

## 25 Consultation Queries: Responses and Conclusions

*Query: The panel seeks views on the priority areas where the resource base need should be safeguarded and where alternative savings could be obtained or new revenue generated.*

### **Conclusion and Response:**

There are significant gaps in Ireland's current compliance with Irish, European and International law. Closing this gap and meeting regulatory requirements are not areas where Ireland has discretion to 'opt-out' or cut-back, and that needs to be simply acknowledged. The resourcing of any agency or agencies necessary to deliver on this agenda needs to be properly supported. It is acknowledged that the EPA's efficiency in delivering and leveraging value for money across its functions and resources is not entirely clear to us. On the one hand there is disquiet with the quality of its performance in certain areas, and on the other hand there is undoubted recognition of the need for a lot of further effort and resources to be targeted on both regulatory compliance and the ultimate objective of environmental protection. Certain opportunities may exist to leverage certain economies of scale, and of expertise through centralisation of certain functions and reduce the scale of functions within organisations which the EPA has to police – for example consolidating waste licensing and permitting within the EPA.

To better leverage specific knowledge and expertise, more optimal configuration of the responsibilities across and within the variety of agencies who work with the EPA on environmental protection is needed.

The underlying concerns with the EPA's performance would need to be addressed in the context of any proposals for greater powers and resources.

# Part D

## Sections 12 Further Recommendations

## 26 Further Recommendations:

### *27 Context for further recommendations*

When considering these further recommendations, we would urge the Review Panel to focus on the concerns on governance outlined earlier in the section entitled 'Protecting the Environment'. The associated recommendations should not be seen as being directed automatically toward the EPA; and need to be directed in the context of other safeguards, checks and balances and complimentary initiatives being implemented within and over the EPA.

Additionally due to time constraints we have not been able to deal with the recommendations of the OECD report on Ireland's Environmental performance in detail here – but we would welcome the opportunity to discuss this further – particularly in the light of its commentary on waste management and water quality matters, the extent and implications of our non-compliance with environmental legislation, the deficiency in Irish decision-making for Biodiversity considerations, and the concerns it expresses regarding the outstanding implementation of the Aarhus convention.

**Note:** Many of our recommendations are implicit in the findings and conclusions articulated throughout this document in that they signal a matter of concern which needs to be addressed. It was not possible in the time allotted to detail all of the associated recommendations separately. However as they have been raised in the findings, this will facilitate an associated recommendation being tabled and discussed in the subsequent consultation activity, or through a supplementary appendix if preferred.

These further recommendations are grouped under the following headings given their focus:

- Licensing and Information
- Compliance and Enforcement
- Monitoring & Assessment
- Education
- Climate

## 28 Licensing & Information

28.1.1 Perform an analysis on the licenses issued by the EPA and on the standards and controls they require. Compare it with international experience and standards in order to build confidence in the EPA's license approval and review process or to inform adjustment as appropriate.

28.1.2 Provide for real compliance with the requirements for public participation at multiple stages in the Environmental Appraisal Process

28.1.3 All public participation processes should have a lead time of 2 weeks – as a notification period; and an increase of the period set aside for subsequent participation.

- The lead in time is intended to allow the public to digest the information provided in the notification
- This is in order to facilitate access to information which the public may need in order to participate effectively, the time periods for participation should take into account the time periods allowed under SI No 133 of 2007 for the Public to Access Information on the Environment.

In summary the minimum period for participation should be 6 weeks, following a lead-in of 2 weeks of notification of the commencement of the process therefore. The 6 week period should be seen as a minimum and be increased where the decision to be made is technically complex.

28.1.4 Explore the benefits provided by the compliance and quality checks performed on Environmental Impact Statements, EIS in the Netherlands by a body which independent of the decision making authority.

28.1.5 Particular focus should be brought on the need to consider aggregate and cumulative impacts of water abstraction and discharges in assessing planning and licensing applications. Similarly the implications of emissions from existing or permitted premises should be specifically considered given the cumulative impact of compounds such as furans and dioxins and the potential for complex interactions.

28.1.6 The operational rules of all advisory bodies must:

- Provide for sufficient time to properly consider documents pertinent to particular decisions, with such documents being available at least a week prior to meetings or decisions
- Provide a safe space for creative conversations by encouraging open communication between the individuals on those bodies in order to achieve maximum benefit from the skill-sets of the individuals involved

28.1.7 That the government amend the EPA Act, 1992 to include a provision that: All IPPC licensees that carry substantial stocks of flammable chemicals but where the quantities are below the threshold for section 17 of SI 74 of 2006 (Seveso Sites) are required to:

- Provide a regularly updated inventory of same to the EPA and to the relevant local Fire Service
- Have a fire safety certificate
- Consult with the Fire Services, the EHO and the EPA in the creation of a periodically reviewed pre-fire plan, to include a public information programme

28.1.8 That the requirements contained in IPPC Licences for the preparation of Environmental Emergency Procedures should include consultation with the public, Fire Services and EHOs. These procedures should include measures to inform the effected public as soon as is possible regarding the nature and gravity of the emergency, indicating the most appropriate actions for them to take to ensure their own safety. They should also include measures for reporting to the public and the relevant authorities after the emergency is over, outlining the nature and scale of the event, the short and long term health/environmental consequences and the measures taken to ameliorate them and to prevent recurrences.

28.1.9 That the EPA meet with the Fire Services to jointly address the general issues of safety and the environment relating to sub-Seveso Sites

28.1.10 That fire reports should be made available electronically by the fire services free of charge or in paper format for the cost of a photocopy. This is environmental information and comes under S.I. No 133 of 2007.

28.1.11 That the EPA ensures that the relevant Environmental Health Office is immediately informed in the case of a fire at an IPPC licensed premises.

28.1.12 That the government amends the EPA Act, 1992 to include a provision that all IPPC licensees are required to provide:

- Public access to the environmental records held by them as required under the license.
- A clearly visible notice at the main entrance to the facility announcing the availability of this information as well as the times when and location where the information can be viewed. The notice should also carry the names and contact details of the person within the organisation responsible for the provision, and the relevant OEE Inspectorate.
- A public communication programme to the EPA. This programme to be advertised at the time of its inception in the relevant newspapers, and to be displayed at the main entrance to the facility.
- An appropriate place where the public can view the information.
- Training for the appropriate staff on the provision of environmental information.
- Training for the staff responsible for this provision to enable them to assist the public in understanding the information.

28.1.13 That universal environmental software is developed to enable the direct online feed of data to the EPA from the IPPC licensed facilities. Further that this software converts this data in real-time into user friendly information available through the ENVision environmental mapping system as well as on site at the IPPC facility. Here it should appear as a graph/bar diagram etc showing the value as a percentage of the limit value, together with a layman's explanation of the significance of the particular parameter being measured. The software system must also allow the member of the public to go beyond the graphics to access the raw data if they want to. The use of this software should be a condition of the licence.

### **28.1.14 Compliance & Enforcement**

#### 28.1.15 Assessing the compliance of Government Strategy and Policy

- The EPA needs to be mandated to review and pursue adjustment of Government strategy and departmental policy, and the operations of government agencies to ensure their compliance with environmental legislation. In brief the Government needs to subject itself to a compliance audit and to respond to the findings and recommendations of such a review. An agency undertaking such a challenging task needs to be and indeed feel appropriately insulated against political influence.

#### 28.1.16 Legislation and Standards:

- Full and proper transposition of a number of critical European Environmental Directives is considered to be an essential complimentary initiative and this is addressed more fully in the section on legislative framework, together with the need to ratify and/or implement fully a number of critical international conventions, including the Aarhus convention. Additionally decision-making needs to be permeated with an understanding and appreciation of international standards. Key environmental standards need to be adopted and a framework put in place to keep Ireland's standards and its decision makers updated.

#### 28.1.17 Provide for both the independence and funding of the Inspectorate

- The current model where the licensee effectively reports on their own compliance is not appropriate. There is a need establish a more independent model.
- There is a need to consider how a more independent inspectorate could be funded or at least contributed to by the industry sectors benefiting from the licences – without this leading to an inappropriate influence and constraint on the resourcing of that inspectorate. This needs to be explored further as the fundamental concerns exist regarding the conflict of interest presented in the current system where the licensee is responsible for providing the information on their compliance of otherwise. It is also considered that it is not reasonable for the taxpayer to have to fund an inspectorate for a sector: which is not only creating negative emissions and impacts on their environment in the course of its operations, but which is profiting from those self-same operations. There was also the view that it might facilitate an element of self-policing if a portion of the costs associated with enforcement was charged back to the sector in

arrears. As it would encourage operators to behave in such a way as to reduce the prospect of this charge. This is a matter which needs to be explored further.

28.1.18 That where there is controversy regarding environmental monitoring at a particular facility the EPA should be empowered through an amendment to the EPA Act to carry out the full range of the necessary environmental monitoring required under the licence, employing the appropriate contractors to perform the monitoring, and re-charging the Licence holder accordingly.

28.1.19 An Environmental Crime Unit

- There is a need for an environmental crime unit – with investigative skills and resources, and with powers to enter premises and seize property and evidence (with appropriate controls thereof of course). This is to facilitate the building of robust evidence-based cases to support effective enforcement proceedings.
- Such a unit should be able to draw on and interact with the other agencies such as An Garda Síochána, The Criminal Assets Bureau, and The Office of the Revenue Commissioners for example, in addition to the NPWS, fisheries boards, etc. This would facilitate exploration of the full extent and trail of operations and associated environmental damage. Cross-border relationships and bodies will also need to be enhanced, given the tendency for the border to be used to mask and manage environmental crime.
- Such a unit should also address post-mortem requirements for dead animals – particularly where poisoning is suspected, or where otherwise strong animals exhibit strange symptoms and die. The case of a number of strange seal deaths in recent times all within a certain area was highlighted. In these cases no state agency pursued post-mortem examination or detailed analysis of the remains to determine what had transpired, or to determine what if any action was required as a result, what risks were extant or what communication was required to allay or raise public concern as appropriate. Such failures are not acceptable and need to be addressed, with clear responsibilities and requirements specified.

28.1.20 There is a need to enable better integration with the Sea-fisheries protection agency and the EPA in addressing their respective responsibilities. This was specifically highlighted in the context of enforcement and compliance management

### 28.1.21 Environmental List in the Courts

- Address the need for a parallel environmental stream in the courts, from the district court up. This is to facilitate focus on the particular complexities of environmental and natural law, the technical understanding of environmental considerations and of various technical emissions considerations. The potential availability of such legislation should be explored or drafted and implemented as required.
- The implementation of the EU Directives on Environmental liability and use of criminal law on environmental matters also need to be addressed.

### 28.1.22 Penalties, Deterrents and Incentives

- A review of the penalty structures should be undertaken in order to provide for effective deterrents to environmental crime and damage.
- A new order needs to be established where the enforcement climate is:  
*' you will be prosecuted – effectively and significantly!*
- The use of carrot and stick approaches should be considered with awards and incentives to inspire compliance.
- The use of operational penalties should be considered carefully. There are concerns that operational penalties may be perceived as hurting employees; and therefore might compromise the contribution employees sometimes make in alerting the enforcement system to non-compliance in the first instance.
- The linking of penalties to profits of the operators should be considered. For example if a penalty is to be configured as an appropriate deterrent it needs to be scaled in terms of what will have an impact on a particular operation or corporate entity.

### 28.1.23 Restoration Orders

- Recommendation that recourse to the Courts for restoration orders be the norm.

#### 28.1.24 Incentivise Compliance

- The use of incentives to promote compliance and improved environmental metrics in areas and industries should be considered.
- The use of awards to signal the good and excellent environmental status of an area will stimulate local pride and financial reward through tourism etc.
- The use of awards for compliance and the publicity associated with same, coupled with negative publicity for offenders will serve to inform the market and encourage local purchasing decisions etc.

#### 28.1.25 Use of fiscal instruments

- Such measures should be explored in order to incentivise the market and consumers – so that environmentally damaging solutions and products are less attractive than more sustainable ones.

#### 28.1.26 Single Point of Contact Helpline for environmental concerns/incidents

- We recommend the implementation of a 'single point of contact' helpline to initiate and co-ordinate an appropriate multi-agency response to environmental incidents or crimes. This should be available 24\*7\*365; with the appropriate back-up for the delivery of appropriate and co-ordinated response teams.
- The reality is that deliberate environmental pollution events are usually perpetrated out of hours and at weekends. The NPWS does not provide out of hours cover. The typical recourse for the concerned public is to ring 999, the Garda or the zoo, with varying levels of support and advice being available from local authorities out of hours and the level of information and assistance provided across these bodies varying hugely depending on the experience of the personnel on the day.
- The current requirement for 'Joe Public' to analyse and determine the possible source and nature of the pollution, together with the requirement for him to assess the type of risk and the geographical context and associated jurisdictions before they decide to continue on their way or to call and report an environmental incident or concern - is not seen as an appropriate engagement model. Intervention and engagement by the public in environmental management needs to be easy, if it is to work.

- The EPA's existing helpline is not in the public mindset. In fact it is not even well known or understood even within the ENGO sector. Additionally it has limited scope and reach. However it is something which might be built on and it is worth exploring further how these requirements could be addressed and leverage the expertise and infrastructure of the EPA.

28.1.27 'No' to a 'risk-based approach' to compliance and enforcement

- A risk-based approach to compliance and enforcement was rejected as wholly unacceptable. The current experience of the oil pollution in the Mexican Gulf is seen as a too compelling indictment of a risk-based approach.

28.1.28 'No' to Administrative Penalties

- The concept of administrative penalties which is raised elsewhere in the consultation document was also noted as a concern. While the overhead and delays associated with judicial recourse were acknowledged, together with the limitations for considering environmental matters in the current system. However the fundamental independence and more transparent culture of the courts was seen as essential and preferable to a system where decisions on penalties and enforcement in general would be conducted behind closed doors, in an un-audited and un-checked environment. This is the view of what an administrative penalty system would be and why it is not acceptable.

28.1.29 A more diverse and innovative approach to managing diffuse pollution

- The difficulty of identifying and pursuing effective prosecution for more diffuse pollution sources such as that from Agriculture or illegal dumping is acknowledged. The ability to consequently create effective deterrents to such pollution is consequently hampered. Therefore there is a need to explore alternative approaches to ensuring it doesn't happen in the first instance. Some of the suggestions included: better infrastructural provision, fiscal/price incentives and education in general.
- Equally there is a need to be able to respond more quickly and effectively when these incidents happen to limit the environmental damage caused. So further recommendations were made for:
  - Better monitoring through localised networks

- The creation of alert mechanisms
- An increased focus on how to create and leverage effective response mechanisms
- These are all critical to limiting the environmental damage caused, by diffuse pollution sources which, we must acknowledge, are difficult to control in the first instance. However, if something is more difficult to address and avoid in the first instance it is all the more imperative to focus on very effective response mechanisms to address it. Some further detail on recommendations which may assist in this regard are outlined below:

*Expanding data collection:* Dissemination of water monitoring capability and interest in local populations for example would serve to massively increase the compliance resource base available to the state. Similar models could be used in collating data on indicator species which can highlight important environmental changes, and also feed into and compliment wider biodiversity management programmes and initiatives. The idea of building on the 'Water Keeper' model and legislation into something akin to an 'Environmental Keeper' was suggested.

*Single Point of Contact Environmental Helpline:*

Additionally the provision of an appropriately configured and supported emergency help-line; which is available 24\*7\*365 – which has already been recommended would help here also. It has been outlined in more detail as a specific recommendation earlier in this section. Such a service would act as point for receiving information and directing and co-ordinating a response to an environmental incident.

28.1.30 Accountability for compliance and enforcement; and incentivisation.

- There is a need for a mechanism to create accountability and oversight of the delivery of enforcement and compliance requirements. There is also a need to consider how greater incentives can be provided to the associated bodies to deliver on enforcement and compliance.

## **29 Monitoring & Assessment**

There is some cross-over between some of our recommendations for Compliance and Enforcement and for the matters of Monitoring – these should be taken as read.

- 29.1.1 Identify desired environmental outcomes from Agri-Environment schemes and measure the effectiveness of the schemes in delivering on them and adjust the schemes accordingly. The priority needs to be on creating positive environmental outcomes.
- 29.1.2 Better leverage of environmental indicators in determining the quality of the environment. For example use of indicator species and changes in populations etc.
- 29.1.3 Leverage synergy from surveys undertaken by ENGOs for wider or more specific biodiversity considerations and data collection.
- 29.1.4 Address the immediate need for bio-monitoring of the Irish population for compounds associated with IPPC licences
- 29.1.5 Address the need for background data on compounds emitted by IPCC plants so that in the event of an incident/accident the impact on environmental levels can be properly assessed
- 29.1.6 Provide for improvements in the information collated in Cancer and other Disease Registry's and that of other surveillance systems. This is to enable the making of informed associations and correlations between environmental factors (e.g. mobile phone masts, pesticides, plant facilities etc.) with records on exposures and incidences of disease. Currently the data recorded in these registries is minimal and does not support such analysis.

### 29.1.7 *Education:*

29.1.8 Provide for greater engagement by 'the EPA' with consumer bodies, trade unions and youth groups etc on an ongoing basis, to:

- instil a sense of 'shared responsibility for the environment'
- create an 'appreciation of the impact of our activities on the environment'
- create an 'understanding of the consequences of poor environmental management'

29.1.9 Environmental education and awareness initiatives also need to appeal to our self interest with a view to changing behaviour and to build a more focused environmental moral code, by highlighting the co-relation between environmental health and our own health or our financial health. For example - by highlighting the impact of certain emissions e.g. Nitrogen Dioxide from the burning of fossil fuels on asthma levels, and the associated impact on our overall health costs, and the consequential impact on our taxes – the public starts to perceive the prevalence of certain gases as being a very tangible issue for them. This is as opposed to some perceived vague theoretical matter which impacts '*the environment*' and which may be of little concern or consequence to them ordinarily.

29.1.10 Identify and assign responsibility for:

- Engendering a code of environmental responsibility and respect.
- Creating a broad understanding of the impacts of our activities on the health of the environment as individuals and as a society, and an understanding of the wider implications of the environments health.
- Creating awareness of the biodiversity impacts of certain products – e.g. palm oil – so as to influence behaviour, consumer choices, and ultimately manufacturer's demand and consequentially the supply.
- Raising awareness especially at the point of consumption of hazardous products – e.g. the purchasing of a can of paint should be accompanied by guidance on the appropriate handling and disposal requirements for it.

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## **30 Climate:**

- 30.1.1 Focus on changing the mindset and incentivising a significant change in behaviour and consumption patterns of the 4 million odd users of the environment on the island of Ireland.
- 30.1.2 Specification of projections and requirements on allocation plans and emissions planning need to separate out/isolate the influence of industry in such matters, given their natural focus on the emission levels they need to get licenses.
- 30.1.3 Develop and focus on a plan to reduce GHG's by 30% in line with the requirements of the IPCC; so as to ensure we do not undermine the Mexican Summit agreement by focusing on an inadequate target of 20% in the first instance.
- 30.1.4 Provide clarity on the responsibilities for highlighting and driving the responsible target of a 30% reduction in GHG's.
- 30.1.5 Provide clarity on the responsibility for creating and managing a real 'delivery plan' to achieve the reductions in emissions.
- 30.1.6 Focus on enabling and achieving real reductions in our GHG emissions rather than focusing on 'inventory management' which only creates paper based changes.
- 30.1.7 Support research to also focus on ways to actually reduce our emissions. (The underlying concern here is that the current focus of research is on reducing our liabilities through manipulation and re-evaluation of our inventories.)
- 30.1.8 County Development Plans and Government Strategies need to be aggressively and critically 'climate proofed' or appraised.
- 30.1.9 Provide for binding national targets for the emissions from each sector which are followed through in licensing and decision making.
- 30.1.10 Explore, in advance of the Mexico summit on climate change, alternative approaches to Global climate governance. Actively engage with ENGO's in the efforts to break the deadlock – leveraging ENGO's relationship networks and expertise.
- 30.1.11 Pursue an all-Ireland approach to our climate change responsibilities.

- 30.1.12 Ensure there is appropriate participation with and attendance by Ireland of the UNEP Governing Council
- 30.1.13 There has been welcome advocacy within the EPA<sup>15</sup> that the measurement of carbon sequestration in our extensive hedgerow network should be considered for inclusion along with the forestry tallies, in relation to our Kyoto obligations and the successors thereof.

To achieve this changes are required in the definitions and accounts used for such calculations. It is therefore recommended that Ireland should engage with neighbouring jurisdictions, such as Wales and Northern Ireland, who would have similar hedgerow profile and interest in this area. Such a group could then to collectively seek changes to the land use definitions, as used in the current Copenhagen round. This is in order to more broadly reflect the types of measurable tree cover that are cultivated in this part of the world, and provide recognition for their potential contribution to climate change management.

Such an approach would raise the profile and protection for hedgerows. This would serve to enable and protect the multiple positive environmental and cultural benefits already offered by the hedgerow network. For example provision of habitats, flood management, wind breaks, shade to animals and crops, provision of biodiversity corridors, and which can be under-valued by the mainstream. Additionally if managed appropriately they can provide a source of carbon neutral fuel adding to their climate-change contribution; and of course provide important heritage considerations in relation to maintaining the layout and boundaries of the ancient countryside, in addition to the visual amenity they provide.

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<sup>15</sup> Data Analysis and Estimation of Greenhouse Gas Emissions and Removal for the IPCC Sector Land Use, Land-Use Change and Forestry Sectors in Ireland: Environmental Research Centre Report P.O'Brien, EPA

### ***31 Environmental Pollution & Environmental Management in general***

31.1.1 Establish an overall plan to deliver a reduction in pollution, and to target the polluters in a concerted campaign starting with environmental hotspots.

31.1.2 Establish an overall strategy to address the environmental damage occasioned by invasive species. For example Japanese knotweed, Himalayan Balsam, rhododendrons, laurel, gunnera, giant hogweed (which also presents a significant blinding hazard to humans), and mink – and clearly establish the EPA’s role in same and that of other agencies.

31.1.3 Recommend consideration be given about how to ‘push information’ or make environmental information more readily available to decision makers. So they can make more informed assessments and decisions in relation to the environmental consequences of proposals.

31.1.4 Consideration should be afforded to PRTR protocols in the effective management of hazardous substances and the associated risks of same.

31.1.5 The extent of the EPA’s jurisdiction at sea needs to be clarified, and potentially extended. This is in recognition of the fact that so many land-based pollution incidents have a consequential impact at sea, in addition to the risks which exist at sea, and the need to protect our marine environment.

## **32 Assessment**

32.1.1 There is a need to provide environmental oversight of the large land-owning semi-state bodies such as Coillte and Bord Na Mona, and the commercial rules governing them; and to create a perspective of the environmental consequences of their operations. Such oversight needs to be able to inform and influence these bodies in delivering less damaging and more positive environmental outcomes.

## **33 NPWS relationship**

33.1.1 Improve the Resourcing of the NPWS, and build on its biodiversity expertise rather than augmenting its already extensive administrative resource base.

33.1.2 NPWS funding to be reviewed in light of the EPA's funding profile.

33.1.3 To raise the profile and provide for effective management of biodiversity considerations configure a model across both the EPA and the NPWS, which leverages the NPWS's knowledge of biodiversity considerations and local insight, and compliments this with the credibility and weight afforded the EPA.

## **34 Structures & Governance**

34.1.1 Appointees to the role of EPA's Director General should have a credible and proven track record on environmental protection, and a strong track-record of capability in their own area of expertise. There is an acknowledgement that there are significant levels of technical expertise which would be desirable for anyone charged with running the EPA. However the practical reality is that such a requirement may be best served by drawing candidates from industry and while this may not necessarily result in a conflict of interest – it most certainly serves to undermine public confidence in the role of the Director General of the EPA and its other directors. Our view is that the ultimate criterion must fall to the overall cultural influences of the candidate and their environmental priorities – as expertise can be developed and supplemented by advisors, but the former considerations are not so easily addressed or augmented.

34.1.2 SOLUS agreements should be considered to restrict movement to and from key positions within the EPA and industry.

- 34.1.3 Greater focus is needed on how to evaluate the performance of the EPA's director group fairly and effectively in terms of their environmental contribution in addition to their organisational contribution.
- 34.1.4 Create a better level of understanding and appreciation within its stakeholder community of how the EPA spends the funding provided to it and its sources of income.
- 34.1.5 Consideration for an independent EU directorate of Environmental Agencies should be actively explored given the models now been implemented to provide for financial oversight. The Environment is the ultimate shared resource and if such structures are deemed appropriate to protect our economies, markets and currencies - they should be explored for to ensure responsible environmental policy and management also.
- 34.1.6 Explore carefully the relevance of new asset management models in enhancing governance of the environment – where users pay for the use of environmental assets and trustees are created to manage common resources or environmental assets. While there are strong benefits to such models in the way they can be used to inform decision making - there are downsides where such models can be unscrupulously exploited with compensatory payments or offsets which do not recognise the complex interactions across environmental assets, or the complex conditions and timeframes needed to create or replace or remediate habitats to robust and healthy status.
- 34.1.7 Explore the Coastal Zone Management Framework as a model for other areas of environmental protection and management, and the integration of a multi-agency approach in delivering same.

### **34.1.8 Stakeholders**

34.1.9 The agency should view The Environment as its ultimate customer.

34.1.10 Pursue closer collaboration with ENGO's following the successful partnership models and experience exemplified in UNEP Climate Neutrality Network and the ECO Cites Programme.

34.1.11 Expand and build on the climate change sessions conducted last year, and include ENGOs and other CSOs amongst the speakers.

34.1.12 Leverage the ENGO sector and CSO more effectively in communications programmes.

34.1.13 Leverage more effectively the linkages and credibility the Agency has with the media, in order to keep the public informed more regularly and in more relevant and compelling ways.

34.1.14 Provide for a multiplicity of messaging vehicles to disseminate environmental messages in order to permeate the public mindset and influence behaviour positively for the environment.

34.1.15 Recommend that an externally conducted employee survey be conducted to assess staff satisfaction within the EPA, their levels of motivation, and their sense of empowerment to deliver positive environmental outcomes, and to contribute effectively to environmental governance. The findings of such a survey should drive a set of recommendations to address issues which emerge, particularly in the context of the wider recommendations of the review panel.

## **35 Research**

35.1.1 Promote research on the science of consultation. The effectiveness of all implementation strategies is so dependent on the level of engagement, participation and support initiatives gain from the outset. Potential problems and risks which can de-rail or undermine objectives frequently could have been foreseen and addressed more effectively if a wide perspective had been brought to bear on a proposal from the outset and maintained throughout the programme. There is a real skill and science to managing and leveraging consultation

effectively. Performing research and building up understanding of best practice and expertise on consultation as an activity - would yield multiple benefits across multiple areas.

## **36 Costs**

36.1.1 Review the EPA's budgetary performance in the light of comparisons with the total UNEP budget.

36.1.2 Explore opportunities for synergy and efficiency with the re-structuring of the fisheries boards particularly in the context of the Water Framework Directive.

## **37 Best Practice**

37.1.1 The benefits of the Netherlands model to review and assess and check on the quality of an EIS for a development proposal independent of the body making a decision on the development should be explored. This would be with a view to determining if such a model should be introduced in Ireland, particularly in the light of the deficiencies of EIS in Ireland and of the underlying compliance issues associated with these deficiencies, and the financial penalties associated with this.

37.1.2 The different allocation of responsibilities across Scottish Nat. Heritage (which is responsible for biodiversity and research) and SEPA (which is responsible for water and waste) – reduces the overlap, and simplifies matters. It may be worth considering or comparing that model with the Irish EPA/NPWS arrangement.

37.1.3 There is a need to increase the appreciation for and understanding of soft-engineering solutions to assist in our management of the environment and adaptation to climate change, and in the need to provide defences for certain areas. The UK is increasing its exploration, understanding, recognition and leverage of such approaches.

For example: There is a particular focus on the role wetlands have to play in flood prevention, and indeed in flood creation. This is an area of increasing relevance to Ireland given recent events and the expected impact of climate change on our rainfall patterns. In The Pitt Report<sup>16</sup> it outlines how the degradation in wetlands can be associated with flooding of communities downstream, and it also outlines

<sup>16</sup> Learning lessons from the 2007 floods. An independent review by Sir Michael Pitt. Interim Report

the role for rehabilitated wetlands and soft engineering in flood prevention. Such solutions provide a win-win situation - by creating:

- Positive outcomes for biodiversity in the creation or rehabilitation of habitats.
- Positive social and economic benefits – in terms of reducing the societal distress of flooding, and reducing the other economic costs associated such as interruption in normal economic activity, diversion of national fund into emergency/flood-relief measures, and reduction in costs to financial institutions such as insurance companies which would otherwise be fed back into the overall cost base compromising national competitiveness.

Additionally the Haycock study commissioned by the National Trust which is referenced in the National Trust's paper 'Land Management and Flood Risk Evidence for the Pitt Review' and the National Trusts particular experience of land management to address flood risks should be considered also

Therefore one specific recommendation arising out of the more general recommendation that there should be a greater focus on use of soft-engineering solutions - would be that fiscal incentives to construct and rehabilitate wetlands and the need for demonstration sites should be explored more fully in an Irish context.

**Contact information:**

For further details please contact Michael Ewing, Social Partnership Coordinator.

Postal Address: Environmental Pillar of Social Partnership. Tullyval, Knockvicar, Boyle,  
Co Roscommon

Telephone: 071 9667373

Mobile: 00353 (0)86 8672153

Email: michael@environmentalpillar.ie

Skype: michaelk.ewing