

Sustainable Water Network (SWAN)

- Response to Public Consultation -

Water Supply Project - Eastern and Midlands Region Preliminary Options Appraisal Report (POAR)



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1. INTRODUCTION TO SWAN

The Sustainable Water Network (SWAN) is an umbrella network of 26 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD), the Marine Strategy Framework Directive (MSFD) and other water-related policy and legislation. SWAN member groups are listed in Appendix I. SWAN has been actively engaged in WFD and other water policy implementation at both national and River Basin District (RBD) level since 2004, responding to water-related public consultations and representing the environmental sector on WFD River Basin District (RBD) Advisory Councils, the South Eastern RBD Management Group, the Public Water Forum, the Irish Water Stakeholder Forum and other water policy-related fora. SWAN has been committed to participation in consultations on water governance and water services, including making a number of formal submissions over the past six years - before and after the establishment of Irish Water - in relation to water governance and water services planning, starting in December 2010 with the publication of the report, *'Proposal for a New System of Water Governance'*.

2. INTRODUCTION TO THIS SUBMISSION

SWAN's welcomes the publication of the Preliminary Options Appraisal Report (POAR) and is appreciative of the extended opportunity to comment on it. Due to necessary prioritisation of the Water Services Strategic Plan (WSSP) consultation in spring of 2015 (with which there was a significant overlap), SWAN was not in a position to make a submission on the Project Need Report and thus this is our second input to Irish Water on this project.

SWAN notes that the consultation documents for this phase of the WSP are extensive, detailed and technical, comprising many inches and hundreds of pages of documentation, including eight appendices. While the POAR report itself is clearly written (from the perspective at least of an organisation specialising in policy analysis), there are multiple references to reading sections *'in conjunction with'* the associated appendices. This makes effective engagement in the consultation almost prohibitively challenging for a small organisation of limited capacity. SWAN was not therefore in a position to interrogate the entirety of the technical detail contained in all eight appendices. These challenges are of course heightened for members of the public and stakeholders who rely on non-expert, voluntary inputs. (This is discussed further in Section 9 on public participation.)

3. SCALE OF THE WATER SUPPLY PROJECT

This submission is made very much in the context of the enormous - and indeed historic - scale and significance of this project; in terms of capital construction (and operational) costs, which may exceed €1billion; the scale of abstraction and the range (*'almost the width of the State'*) and diversity of regions, conurbations and landscape/habitat types to be influenced and traversed by the pipeline. Its national significance, though grossly under appreciated by the vast majority of the Irish public, cannot be overstated. Its scale stands in stark contrast to the modest 46 submissions received from the public in response to the previous 'Options' consultation.

4. INTEGRATED WATER MANAGEMENT & THE WATER FRAMEWORK DIRECTIVE (WFD)

It isn't necessary to rehearse again the requirement of the EU Water Framework Directive (WFD) here. Suffice to say, as we did in our last submission, that it is vital that the key legislative context for this project is the WFD and that water services planning, in particular large-scale infrastructure projects such as the WSP, only take place within, and not alongside, the river basin planning and integrated water management approach required by this directive.

We welcome the increased references to the WFD in the POAR and the acknowledgement that '*Consultation submissions have emphasised the importance of the Water Framework Directive (WFD) and the central role of river basin management*'. However in practise, we see no evidence that the overarching issue which we have raised regarding lack of integration of the WSP with integrated catchment management is being acted upon. While it is also to be welcomed that '*the WSP is cognisant of review work which has been carried out on characterisation of water bodies*', SWAN would like to seek clarification on how this is reflected in practise. The EPA Catchment Science and Implementation Unit are very clear that this characterisation is an ongoing process which will not be completed until at least Q4 of this year. Therefore it would not yet be possible to fully integrate the outputs of this vital catchment characterisation exercise until the end of this year. Furthermore, there do not appear to be any formal integrated structures in place to ensure co-ordination of WSP development with the characterisation of the affected catchments? SWAN asserts that this should be remedied as a matter of priority.

SWAN appreciates that the integrated approach we are recommending does not lie fully within the gift of Irish Water, but this limitation only serves to illustrate the lack of a co-ordinated approach between Irish Water and the Department of the Environment in relation to this project.

The only formal contacts between Irish Water and the new water governance structures described in the POAR are:

- a presentation by Irish Water to the Water Policy Advisory Committee (WPAC), but which was on the Water Services Strategic Plan rather than the WSP and
- Irish Water '*Engagement with Tier 3 of the governance structure.... to ensure that IW's implementation of the Water Framework Directive in the WSP is meaningful in the Lough Derg / Parteen Basin area.*'

Although an influential body, one presentation to WPAC does not constitute an integrated water management approach. Furthermore, regrettably this was not in relation to the WSP (rather the WSSP). The statement in relation to engagement with Tier 3 is rather vague and focuses just on the Lough Derg / Parteen Basin area, rather than national level engagement. Clarification as to whether this is a formal engagement and what is meant by '*meaningful*' implementation of the WFD would be appreciated by SWAN.

It is the SWAN position that Irish Water should be engaging in an ongoing integrated manner at a national strategic level with the new water governance structures, especially the EPA Catchment Science and Implementation Unit, the Local Authority Water & Communities Office, the Department of Environment and the National Parks and Wildlife Service, in order to ensure that the WSP is developed fully within the context of Integrated Water / Catchment Management and the revised structures for water management in the State.

WFD ASSESSMENT

SWAN welcomes the fact that WFD requirements are included as a factor in the multi criteria analysis. According to the POAR, 'The *ongoing appraisal of the options.....will document compliance with the WFD of the preferred solution*'. SWAN seeks clarification as to how compliance will be documented in light of the recent ECJ ruling on Case C-461/13¹ on the dredging for navigation of the river Weser in Germany which found that:

"Article 4(1)(a)(i) to (iii) of [the WFD] must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive."

A clear indication has been given to SWAN by the EU Commission that this entails a requirement for ex-ante, WFD-specific assessments for individual projects. This should include not just the potential impact of the abstraction but also that of the treatment plant, and construction of the transmission pipeline along the cross-catchment transmission corridor.

5. ABSTRACTION

As outlined in our last submission, the WFD requires the establishment of '*controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction...*' (Art 11.3(e)). This crucial legislation is now more than 3 years overdue in Ireland, rendering Ireland's regulation of abstractions non-compliant, a matter in which the EU Commission has taken a considerable interest.

The South Eastern RBD Significant Water Management Issues (SWMI) report, [Water Matters - Have Your Say](#) stated in 2007 that '*Abstraction legislation is dated and needs to be updated and extended to protect waters adequately, with a modernised system of registration and prior authorisation for significant abstractions.*' Similarly, the 2008 Programme of Measures (PoMs) report '[Revised River Risk Assessment for Abstraction Pressures](#)' states that '*Ireland's current institutional arrangements to support the evaluation of the effects of surface water abstractions need to be modernised. The primary governing legislation for water supplies (Water Supplies Act, 1942) does not consider environmental issues.*' The [2015 draft SWMI report](#) states that '*The linkages between aquatic ecology and river flow / lake level are not well understood, and research has been initiated to establish criteria for ecological flows and lake levels in our surface waters.*'

As indicated in the Irish Water WSSP, this vital legislation is imminent. In SWAN's view this updating of Ireland's unsuitable and archaic abstraction legislation is extremely important and it is inappropriate for an abstraction on the scale of the proposed project to be decided upon, under an archaic, and in the Commission's view, non-compliant regulatory framework, when there is an opportunity in the near future to take a considered approach under the upcoming modern regime.

¹ Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland* <http://curia.europa.eu/juris/documents.jsf?num= C-461/13>

6. INTEGRATION WITH CRUCIAL NATIONAL PLANS OF DIRECT BEARING ON THE WSP: TIMING OF THE PROJECT

The project is taking place in the context of a very significant transition period which effectively constitutes a 'policy interregnum' in a number of crucial national planning areas of direct bearing on the continued feasibility of this project. It is the SWAN position that the current period represents a very particular vacuum because a number of these critical national plans are pending and, given the scale of the project, this situation presents a gap in overarching national planning and water management of such magnitude as to render a pause in this project necessary.

NATIONAL PLANNING FRAMEWORK 2016-2036

The POAR asserts that '*A Shannon source affords an opportunity, as a reliable and adequate resource, for future industry development in the Midlands and would facilitate decentralisation objectives in any planning policy, if required*'. This reads as speculative and SWAN would argue premature in light of the imminent development of a new National Planning Framework.

It has been a universally agreed that significant changes are necessary to national spatial planning strategy, not least in light of the shortcomings identified and recommendations made in the Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal)². In this context a National Planning Framework (NPF) will be developed in the next year and it will sit at the top of the planning hierarchy informing all other planning decisions. According to the Roadmap document published in December 2015, '*This new framework will provide the strategic context for... Investment in critical national infrastructure ... in key areas like housing, transport, energy, water services....*'. (SWAN's underlining) It will also "*address the following matters:*

- (i) *Identification of nationally strategic development requirements for the growth of and investment in cities, towns and rural areas in terms of employment, future population change, and associated housing and commercial development;*
- (ii) *Identification of national infrastructure priorities to address the strategic requirements above, including transportation, water services, waste management ..."*

According to the Roadmap the NPF is scheduled to be finalised in 'Q3-Q4 2016'. Given the absolute and overarching authority and importance of this key national policy, which will frame all strategic planning in the state for the next 20 years, and given that it is due to be finalised within the next year, it is the SWAN position that it is premature to proceed with making a determination on the preferred option for the WSP until the NPF has been finalised in order that the WSP can be 'proofed' against it.

WATER GOVERNANCE & RIVER BASIN MANAGEMENT PLANS

The 2010 statutory WFD River Basin Management (RBM) Plans set out why the then water governance system was dysfunctional; stating that water management is "*fragmented along administrative lines*" and so does not "*facilitate analysis, identification and implementation of the most cost-effective solutions to manage water quality....*" A review of WFD implementation structures conducted by DECLG supports this criticism, concluding that "*the governance arrangements were overly complex with no single body having ultimate responsibility for delivery of the Water Framework Directive.*" There is now broad agreement on this analysis amongst all key government departments, agencies and water management experts, including in the EPA, former River Basin District Project offices and City & County Managers Association (CCMA) and a new

² <http://www.planningtribunal.ie/images/finalReport.pdf>

governance system is in the process of being put in place, with the establishment of the new Local Authority Water and Community Office (LAWCO) this year and the Water Policy Advisory Committee (WPAC) in 2014. There was also general consensus that the 2009-2015 River Basin Management Plans were un-implementable for this reason and also were furthermore inadequate due to a lack of baseline scientific 'catchment characterisation' data.

The objective of LAWCO and the new governance system is to address these fundamental deficits in national water management, in the preparation and implementation of the second RBM Plans and in future implementation of the WFD and integrated catchment management. However, in terms of the WSP, this process is still incomplete. LAWCO has only been in existence since the beginning of 2016, the WFD catchment characterisation will not be complete until the end of 2016, along with the draft River Basin Management Plans and there are currently no WFD stakeholder forums in place.³ If Irish Water are serious about integrating and being '*cognisant*' of the WFD characterisation and river basin planning process, then SWAN asserts that no decision on the WSP preferred option should be taken until the river basin management plans, based on the complete and comprehensive catchment characterisation are published.

NATIONAL REGULATORY FRAMEWORK FOR ABSTRACTION

The introduction of a modern regulatory regime for abstraction is imminent and it is not appropriate for a project which entails the largest abstraction in the history of the state to proceed under the current non-compliant legislative regime (See Section 5 for more). Therefore SWAN asserts that it is premature to make a determination on the preferred option for this project in this soon to be addressed legislative vacuum.

7. WATER CONSERVATION

As stated in our previous submission, Article 9 of the WFD requires the introduction '*water-pricing policies [that] provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive*'. Furthermore, Article 11 requires '*measures to promote an efficient and sustainable water use*' [sic]. Notwithstanding conservation initiatives highlighted by Irish Water in its response to the SWAN submission, it remains SWAN's position that the required measures are currently not in place.

We acknowledge that this is due in part to limitations on Irish Waters statutory competency and thus influence in relation to building regulations and also the current cap on water charges. However, this again serves to reinforce and support SWAN's argument regarding the lack an integrated approach to this project, in particular in this case between Irish Water and DECLG. This lack of an integrated approach is stymying the necessary national programme for innovative and progressive water conservation in all its facets, including rainwater harvesting and possible grant-aided retro-fitting of dual systems as outlined in our previous submission.

In the absence of the necessary compliance with the WFD with regard to pricing and other measures to incentivise conservation, a decision regarding the preferred option for this project is again premature.

³ It is noted that a submission was made to DCC by the Shannon River Basin District Advisory Council in response to the SEA in 2006. No such equivalent body currently exists.

8. WIDER STRATEGIC ASSESSMENT OF THE REVISED WSP INCLUDING THE IMPACT OF ADDITIONAL WASTEWATER ALONG BENEFITTING CORRIDOR AND IN DUBLIN

It is crucial that the environmental impacts of the entirety of this project in its expanded form are considered. This is important because the project when it was the responsibility of Dublin City Council, and had Strategic Environmental Assessment conducted on it, had the Dublin region as its '*principal focus*'. Once inherited by Irish Water it expanded to provide water services '*at a national level*'. Therefore SWAN believes that a similar strategic assessment should be conducted again, given the revised national remit and within the context of the imminent National Planning Framework.

This must include the impact of any additional wastewater generated as a consequence of the WSP (especially in the absence of real incentives for householders to conserve water), for Dublin Bay and also along the benefitting corridor. Irish Water has indicated that the WSP will not result in significant additional wastewater. However, the rationale for this case should be presented to stakeholders in clear manner for consideration.

In relation to the benefitting corridor, the POAR states that '*A Shannon source relieves the pressures of demand on finite sources in the Midlands, and affords an opportunity to rationalise (decommission) existing water treatment plants which are overly reliant upon poor quality and unreliable water sources*'. While this assertion would appear broadly sensible, the rationale behind it is not clearly presented in the POAR (unless they eluded SWAN attention in one of the appendices). SWAN therefore seeks clarification on the following: Of the towns that will be provided for, is it definitely the most cost-effective approach to decommission them and replace them as proposed and how has this been determined? Which water supplies are '*under stress conditions*'? How poor are the water supplies? (e.g. are they all on the Remedial Action List?) And are there any other viable options for improving them?

In relation to Dublin Bay, it is a sensitive water body with numerous European and international designations and the magnitude of any additional wastewater to be generated by this project and discharged into Dublin Bay should be presented clearly as part of this consultation. While it would be interesting, as proposed by Irish Water, to meet the separate teams working on the Greater Dublin Drainage Scheme and Ringsend Wastewater Treatment Plant Upgrade, this does not address the deficit regarding the provision of information on the entirety of the project including the synergies between these projects and the WSP. This again highlights the lack of a holistic approach, which should encompass the entirety of this project, even within Irish Water.

The central legislative context for this is the Environmental Impact Assessment Directive, which requires the consideration of both the direct and indirect effects of a project and the Urban Waste Water Treatment Directive with which the Greater Dublin Area (Ringsend) was found to be non-compliant for effluent standards⁴ in the EPA's most recent report '[Urban Waste Water Treatment in 2014](#)'⁵

⁴ for BOD, COD, TSS and nutrient standards

⁵ EPA (2015) Urban Waste Water Treatment in 2014. Environmental Protection Agency. Wexford.

9. TRANSPARENCY AND PUBLIC PARTICIPATION

Notwithstanding the extensive (and presumably costly) information and communications exercise in which Irish Water and its consultants have engaged, it is SWAN's contention that Irish Water's public engagement on the WSP is unsatisfactory in a number of fundamental aspects. SWAN disputes Irish Water's claim that the engagement exercises undertaken by Irish Water constitute meaningful public participation for the reasons presented in this section.

The proposal, by Irish Water (a wholly state-owned company), for one of the largest infrastructure developments in the history of the Irish State has numerous environmental dimensions and consequently requires the application of demonstrably rigorous public participation as described in Article 6 of the Aarhus Convention⁶, which specifically refers to public participation rather than consultation and specifies what is necessary for public participation where "decisions on proposed activities which may have a significant effect on the environment" (Clause 1 b) are being considered". Most importantly, Article 6, clause 8, specifies that "due account is taken of the outcome of public participation" in any decision. The Convention also gives extensive details as to the provision of information for the public. Article 6 of the Environmental Impact Assessment Directive also requires that 'The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures...'

Why is engaging with the public important?

There is now widespread acceptance that actively involving the public in decision-making on issues in which they have an interest can have significant benefits. Extensive academic and "grey" literature supports this position⁷. When carried out successfully, public participation:

- supports and enhances democratic society and accountability;
- increases legitimacy of processes and outcomes, and a wider acknowledgement of this;
- increases public awareness of issues;
- identifies public concerns and opportunities to address these;
- incorporates added value of wider experience, knowledge and skill sets;
- provides opportunities to identify and avoid risks/ errors;
- generates better outcomes, as more perspectives are addressed;
- encourages positive action of citizens;
- results in costs savings and ongoing financial efficiencies;
- embeds longer-enduring outcomes, and sustainable change;
- improves accountability and transparency in decision-making;

⁶ UNECE (1998) Convention on Access to information, public participation in decision-making and access to justice in environmental matters.

⁷ E.g. Rees, Y., Searle, B., Tippet, J. and Johannessen, A. (2005) *Good European Practices for Stakeholder Involvement — Lessons from Real Planning Processes. Case studies and Experiments*. Harmonising Collaborative Planning (HarmoniCOP), WRc plc, Swindon, United Kingdom.

Cooper, T. L., Bryer, T.A. & Meek, J.W. (2006) Citizen-centered collaborative public management. Special issue, *Public Administration Review*, 66: 76–88.

Yang, K. & Pandey, S.K. (2011) Further dissecting the Black Box of citizen participation: when does citizen involvement lead to good outcomes? *Public Administration Review* 71(6): 880–92

The Co-intelligence Institute. (2008) *The principles of public participation*. http://www.co-intelligence.org/CIPol_publicparticipation.html;

Jansky, L. & Uitto, J.L. (eds) (2006) *Enhancing participation and governance in water resource management: conventional approaches and information technology*. United Nations University Press.

UNECE (2015) Maastricht recommendations on public participation in decision-making. Prepared under the Aarhus Convention. United Nations

- generates public support for (& engagement in) outcomes and decisions;
- secures enduring and sustainable solutions/outcomes;
- creates a culture of co-operation, growing the capacity to handle change, tensions and disputes and invest in social structures, institutions and relationships that deliver other knock-on benefits.

It is important to stress that only genuine, well planned, designed and executed public participation (as opposed to consultation alone) will deliver these outcomes. Performed badly or in poor faith, a cumulatively reinforced negative feedback loop occurs where little or nothing of value is added by the stakeholder engagement, and costs (of time, resources, goodwill, etc.) and difficulties encountered, damage commitment on the part of both the sponsors and other stakeholders concerned to future initiatives.

Key Elements of effective Public Participation

Discussion on the key elements of successful public participation / engagement is well rehearsed in the literature and has been set out by SWAN in various submissions to the Department of Environment⁸. A diverse range of mechanisms and particular techniques can be employed to actively involve the public, and a number of typologies have been developed to capture the essential variables amongst different exercises⁹, which Irish Water could be guided on by a relevant independent professional. Increasingly the terminology applied has become somewhat blurred or unclear. Some simple distinctions are commonly recognised¹⁰. These broadly reflect the direction of communication and the flow of information:

- **“information”**, where the stakeholders are essentially passive recipients of information from the sponsor(s) of the exercise (information flowing from the sponsor(s) to the stakeholders);
- **“consultation”**, where the stakeholders feedback their views, analyses, recommendations, and so forth, in response to a request from the exercise sponsor(s) – (information flowing from stakeholders to sponsor); and
- **“participation”**, where the sponsor(s) and stakeholders engage in dialogue, allowing change by all parties and collaborative development of the proposal/decision or other, with stakeholders making input in designing how they participate¹¹.

The most fundamental distinction between these categories relates to the different opportunities they provide for stakeholders to influence the outcome of the process. While specifically concerned with public agencies and decision-making, the recent [Maastricht Recommendations on Public Participation in Decision-making](#), published by the UN to support compliance with the Aarhus Convention makes clear that *“public participation should be seen by all parties as a prerequisite of effective action and an opportunity for real influence, not merely as a formal procedural requirement”* (p.12) (SWAN’s emphasis).

⁸ Sustainable Water Network (SWAN), 2012. SWAN Recommendations for Public Participation Mechanisms in the Department of Environment Community & Local Government (DECLG) 4-Tier Water Governance Proposal. Submission to DECLG and

Sustainable Water Network (2012) Getting it Right ✓ or Getting it Right ✓ Ticking boxes vs. delivering genuine public participation in water management in Ireland. Presentation to The joint meeting of the Task Force on Public Participation in Decision-making of the Aarhus Convention & the Meeting of the Parties to the Protocol on Water & Health on ‘Public Participation in Environmental Decision Making: Focus on Water and Health’, June 2012

⁹ E.g. Rowe, G. & Frewer, L.J. (2005) A typology of public engagement mechanisms. *Science, Technology & Human Values*, Vol. 30 (2), 251-290

¹⁰ OECD (2001) *Citizens as partners: information, consultation and public participation in policy-making*. PUMA, OECD.

¹¹ Jeffery, N. (2009) *Stakeholder engagement: a road map to meaningful engagement*. No. 2 Doughty Centre series “How to do Corporate Responsibility.” Cranfield School of Management.

Rowley, T.J. & Moldoveanu, M. (2003) When will stakeholder groups act? An interest and identity-based model of stakeholder group mobilisation. *Academy of Management Review*, 28(2), 204-219.

The impetus to incorporate public participation in developing and making decisions on plans, policies and projects in recent decades is based on the premise that those with an interest (stakeholders) can contribute specific and valuable skills, knowledge, experience and capabilities to the process¹². In this way their inclusion adds value to the process; helping to secure better outcomes through better decisions, ongoing commitment and co-operation in delivery and so forth¹³. This does not result from tokenistic or placatory communications¹⁴, but respectful dialogue through which unseen issues, enhancements, and assistance in implementation can be identified and delivered. In the case of Irish Water this engagement should represent a genuine *partnership* with stakeholders to deliver their shared water goals.

From the perspective of practical water resource management, there is growing appreciation of the need for adaptive water management, in which active participation of stakeholders is intrinsic. Often termed “learning to manage by managing to learn”¹⁵ as opposed to the more traditional ‘command and control’ approach. Adaptive water management requires a systematic approach where management policies and practice are continually modified and improved as a result of learning from implemented management strategies. The need for such an approach has been demonstrated in the recent Irish experiences of flooding, elsewhere in Europe and further afield¹⁶, and in the literature¹⁷. Such adaptive water management can only be delivered by genuine dialogue and partnership action between water managers (such as Irish Water) and stakeholders (citizens, groups, businesses and industry). This level of public participation requires that sponsors of participation exercises, such as Irish Water, have both the ability to seek out and be open to the use of information that stakeholders contribute, as well as the ability to change based on the processing of this information.

It is sincerely to be hoped that Irish Water does proactively seek to transition Irish practice towards adaptive water management. In this context, delivering effective public participation is vital, and should become a constant and fully integrated part of its operation, building resilient relationships with stakeholders to successfully manage this common good. A core building block for the growth of such collaborative engagements and the development of adaptive water management is social learning. This involves the development (and maintenance) of capacity within responsible agencies, amongst experts, interest groups and the public, in this context to manage river basins effectively; recognising their interdependence, working collectively, dealing with differences constructively and resolving conflicts optimally.¹⁸

¹² OECD (2015) Draft *Principles on Water Governance. Public Governance and Territorial Development*. Water Governance Initiative, Directorate Regional Development Policy Committee, Organisation for Economic Co-operation and Development, GOV/RDPC/WGI(2015)1

Delli-Priscoli, J. (2004) What is public participation in water resources management and why is it important? *Water International*, 29(2), 221-227

¹³ See refs op.cit. 2, 5 & 5

¹⁴ Arnstein, S. (1969) A ladder of citizen participation. *J. American Institute of Planners*, Vol.35(4), pp.216-224.

¹⁵ Bormann, B. T. Cunningham, P.G., Brookes, M.H., Manning, V.W. & Collopy, M.W. (1994) *Adaptive ecosystem management in the Pacific Northwest*. USDA Forest Service General Technical Report. PNW-GTR-341, 22p.

¹⁶ Huitema, D. & Becker, G. (2005) *Governance, institutions and participation: a comparative assessment of current conditions in selected countries in the Rhine, Amu Darya and Orange river basins*. NEWATER report series, No. 7, www.newater.info

¹⁷ Pahl-Wostl, C. (2007) Transitions towards adaptive management of water facing climate and global change. *Water Resources Management*, 21, 49-62.

¹⁸ Craps, M. (ed) (2003) *Social learning in river basin management*. Report of work package 2 of the Harmoni-COP project (www.harmonicop.info)

Pahl-Wostl, c. Mostert, E. & Tabara, D. (2008) The growing importance of social learning in water resources management and sustainability science. *Ecol. Soc.*, (13)

Muro, M. & Jeffrey, P. (2012) Time to talk? How the structure of dialog processes shapes stakeholder learning in participatory water resources management. *Ecol. Soc.*, Vol. 17

In light of the above, to fulfil the **requirements of effective and meaningful participation**, certain conditions need to be met. Briefly, it requires that those whose interests are, or may be, affected by the matter concerned are:

- a. made aware of their potential interest(s) and the nature of the proposal;
- b. given access to adequate information and technical expertise to fully appreciate what is being proposed and the possible implications of this;
- c. provided with accessible opportunities to *participate** in the development of the proposal, its amendment, and the decision(s) as to whether it proceeds or not, according to best available practice;
- d. given clear undertakings on the use of their inputs, feedback on these, and transparency as to the extent of their influence on the decision-making in the process.

* *The Aarhus Convention specifically refers to public participation rather than consultation (Aarhus Convention, 1998).*

Irish Water itself uses the term “consultation” for its engagements with stakeholders on the Water Supply Project (see Project Road Map WSP Consultation). Even allowing for confusion over the correct use of nomenclature, it is SWAN’s view that Irish Water’s engagement with the public in relation to the Water Supply Project contains inherent flaws in relation to each of the 4 areas listed above.

A. Public awareness, education and information

Water, unlike other utilities, is a public good and a basic necessity for survival. Consequently, all citizens thus have a fundamental interest in the management of the State’s water resources. Moreover, since piped (drinking) water is a subset of all our aquatic resources, these need to be considered as an integrated system with which citizens engage not just as consumers, but in myriad aspects of their lives.

While it is true that an individual or group may perceive their interest in a particular matter but choose not to actively involve themselves in connection with it, it is equally true that only when they recognise their interest are they likely to exercise such a choice, as to whether or not to get involved.¹⁹ There persists in Ireland a very low level of awareness amongst the public of the challenges of successfully maintaining and managing limited fresh water supplies, how these relate to broader aquatic resources, and particularly of the pivotal role that can be played by citizens, groups, businesses, and industry, in addressing these challenges. This has been exacerbated by the continuing concentration of heated public debate on the area of payment for water services. Furthermore Irish Water’s focus on large scale and centralised approaches to water management is likely to reduce the perceived relevance of involvement amongst individuals or local stakeholder groups.

In seeking to develop and deliver a national strategy for water in Ireland, integration within the water service sector, and to secure cross-sectoral alignment with the economic, environmental and social objectives of the country, Irish Water is tasked with care of a public good. In this regard, Irish Water and the public at large share a common goal. Indeed Irish Water already recognises the need for the public to play its part in achieving this objective in its “Be Water Smart” efforts. Successful husbandry of our aquatic resources requires action by all stakeholders.

Clearly, there is currently a failure amongst citizens to identify themselves as stakeholders (illustrated by the paucity of responses – only 46 to the Options Working Paper consultation) and to appreciate the importance of their role in relation to water resources, and to fulfil that role. This represents a significant barrier to their active engagement and mobilisation in achieving sustainable and successful management of these resources. Such a situation complicates the task of Irish Water (or any authority with equivalent/ similar responsibilities)

¹⁹ Eskerod, P. & Lund Jepsen, A. (2013) *Project stakeholder management*. Gower, England

Pomeroy, R. & Douvère, F. (2008) The engagement of stakeholders in the marine spatial planning process. *Marine Policy* 32(5), 816-822

which needs this active involvement by the public to deliver its objectives. SWAN asserts that the vast majority of stakeholders are unaware of their interest, or the extent of this, in relation to water resources in Ireland. SWAN has long argued that there is a need for a national information and education initiative on this subject. In the absence of such a campaign to raise awareness and understanding amongst stakeholders of their role, these stakeholders will remain unlikely to engage on water related issues such as the Water Supply Project, without a concerted effort from Irish Water. Irish Water has not prioritised or carried out any such campaign to inform and educate stakeholders and until this failure is addressed, it will persist in rendering engagement exercises undertaken on the company's behalf fundamentally flawed.

Moreover, specifically in its consultation on the Options Working Paper, Irish Water offered "consultation events" which were the only opportunity for face to face dialogue, to just a limited number of individuals (all TDs and Senators) and groups (34). It is not apparent that any open public meetings were held anywhere in the areas potentially affected by the proposals under consideration. So stakeholders not specifically identified and contacted by Irish Water were reliant solely on press coverage of the consultation exercise. Yet these are the stakeholders who might reasonably have expected an additional effort on the part of Irish Water to reach them. It is always more challenging to communicate with numerous, dispersed, stakeholders, but there are many creative ways in which this can be done. In focusing attention on a few pre-selected stakeholders and relying on press coverage for (limited) wider dissemination, it appears that Irish Water takes a two-tier view of the relevance or importance of types of stakeholders. An observer may be forgiven for perceiving this as an exercise in PR; on the one hand a box-ticking exercise and on the other, a means for Irish Water to identify any issues they need to address with potentially problematic stakeholders in order to remove possible future objections to their proposal.

B. Access to information and technical expertise

In the context described above, where the majority of stakeholders remain unaware of their interest, the consultation exercises undertaken to date have included pre-set inputs (reports) from Irish Water as the sponsor, and for most stakeholders no opportunity for dialogue on these. This clearly limits the potential of stakeholders to engage. In addition, no access to expert technical support was provided for those being consulted in order to assist them in fully comprehending the complexities of the material presented, identifying any additional material or information they might need access to, or how their concerns related to the proposal. Such expertise is recognised as being important in order to optimise the inputs of stakeholders, which is of equal value to them as to the sponsor (in this case Irish Water). Providing support of this nature where needed recognises that the capacity of stakeholders to respond meaningfully may be limited in complex and technical areas, but that this does not reduce the validity of the contribution they may have to make²⁰. Had independent expertise been provided, this would also have given confidence to the stakeholders that did engage that Irish Water's intent was genuinely to elicit their input to its maximum value.

Furthermore, no independent facilitation was employed in the consultation exercises. (Such an approach differs fundamentally from that of a corporate communications approach.) Such skilled support - often a professional from the social sciences or community development spheres - is recognised as enabling engaged stakeholders (and sponsors where dialogue occurs) to explore issues fully and optimise inputs and proposals,

²⁰ Rowe & Frewer (2005) op.cit.

Webler, T. (1995) "Right" discourse in citizen participation: an evaluative yardstick. In *Fairness and competence in citizen participation: evaluating models for environmental discourse*. O. Renn, Webler, T & Wiendemann, P. (eds), 35-86, Dordrecht, the Netherlands, Kluwer Academic.

Jacobs, K, Lebel, L, Buizer, J, Addams, L, Matson, P, McCullough, E., Garden, P. Saliba, G & Finan, T. (2009) Linking knowledge with action in the pursuit of sustainable water-resource management. Proc. Nat. Acad. Of Sci. of the USA,

but also represents an opportunity to effectively and neutrally aggregate consultation feedback, ensuring that it is not filtered through the sponsor's lens, both in how it is perceived and responded to²¹. At a minimum this would have given greater confidence to participants that all their issues and concerns had been captured. Where used to its fullest extent, facilitation can enable the development of understanding on any consensus between engaged stakeholders and the strength of concerns across different issues²².

C. Accessible opportunities to participate

Notwithstanding the failings identified above, SWAN acknowledges that Irish Water has undertaken extensive consultation exercises. However, if the object of such an exercise is to engage meaningfully with stakeholders and obtain and take on board their feedback, then the mechanisms employed must be optimised to the task and context. In addition to the points made above, it should be noted that while Irish Water have provided non-technical summary reports, it is arguable that these are so lacking in detail as to make any comment in response of very limited use. Yet the main reports with appendices which are also available represent the opposite extreme. In the absence of any support to interpret and understand the more complex material, Irish Water have, by default, limited the ability of stakeholders to participate in a meaningful or significant way. Had they provided technical support, and provided opportunities for discussion with stakeholders some attempt to address this problem could be identified. These measures would have been evidence of genuine engagement with stakeholders, and a record of discussions a useful resources, whether or not further submissions were made. However, no such provisions are evident.

D. Clarity and Transparency of participation proposed

Before engaging, stakeholders must be convinced of the merits of getting involved in the proposed process²³. This is essentially a question of whether there is sufficient perceived potential benefit for participants to invest time, effort and any associated costs. As the public encounters more, diverse, engagement initiatives, they become increasingly discerning as to whether it is worthwhile to become involved. At its simplest this can be measured as the extent to which they can exert influence on the development of the project proposal and decision-making about it. Irish Water maintains that it is undertaking meaningful public participation. The "meaningful" here cannot be restricted to Irish Water taking what it wants from the exercise, but the public also gaining from the engagement.

In the Non-Technical Summary document for the POAR consultation Irish Water stated that "*The feedback on this consultation will be included as part of the final phase of research and assessment on the options which will conclude in spring 2016 with the publication of the Final Options Appraisal Report.*" on which further consultation would be carried out. The above gives no details as to how submissions will be treated and their contents used. To date, as seen in the Option Working Paper consultation, Irish Water appears to have grouped the issues raised across all submissions, and responded to these in an Appendix to the following consultation document. This allows only the time available for the new consultation in which stakeholders can attempt to assess whether the previous inputs made by themselves and others have been addressed, and if so, whether this has been done adequately. Given the criticisms made in the above sections regarding the lack of technical expertise and support, this situation places stakeholders at even greater disadvantage. Irish Water has also provided bi-lateral feedback on points raised in individual submissions and held '*briefing*' meetings

²¹ European Environment Agency (2014) Public participation: contributing to better water management. Experiences from eight case studies across Europe. European Union, Luxembourg.

²² Rowe, G. (1992) Perspectives on expertise in the aggregation of judgements. In Expertise and decision support. G.Wright & F. Bolger. (eds). 155-180, London, Plenum.

Offner, A.K., Kramer, T.J & Winter, J.P. (1996) The effects of facilitation, recording and pauses on group brainstorming. *Small Research Group*, 27(2), 283-298.

²³ See refs op.cit. note 10.

with at least some of those who provided feedback. However, in at least two cases these comprised consistent resistance to almost all points made by consultees, with minimal evidence that any input had materially affected any element, no matter how modest, of the project.

While SWAN welcomes the fact that the issues raised by stakeholders in the OWP consultation will be *'further reviewed'* and *'considered as part of the wider development of the project'*, how this translates in reality into tangible effects (or not) of stakeholder input on the evolution of the project is not clear. SWAN notes that option appraisal was conducted as a *'two part parallel process'* comprising *'Information feedback from investigative studies'* and *'Multi Criteria Analysis (MCS) by specialists'*. The fact that this did not include a third formal element comprising a detailed analysis of stakeholder input by specialists, further leads to understandable scepticism on the part of stakeholders as to the actual impact or consequence of their time and effort in engaging.

Furthermore, no mechanism to track issues raised by stakeholders is presented by which they can assess how Irish Water handles their feedback and no reassurance is given that, where they are not considered to have been adequately addressed, some follow-up with Irish Water will be provided. Since parties are not aware of the feedback of others until it appears in summary form in the report published for a subsequent consultation (see Appendix H of the POAR Report), they must assimilate whatever inputs were made in addition to their own, how all inputs have been responded to, and assess how Irish Water has responded to their inputs (if at all) in the revised proposals reached. Once again, in the absence of opportunities for dialogue and access to technical expertise, this puts the onus on stakeholders who are largely non-specialist, to adequately fulfil this challenge. The capacity of most stakeholders to respond in such circumstances will leave them at disadvantage. This state of affairs does not suggest that Irish Water is interested in optimising the inputs stakeholders can make.

Conclusion

Principle 10 of the 1992 Rio Declaration recognised the need for all individuals to have access to adequate information on and the ability to participate in the decision-making process in relation to environmental issues. This principle was further articulated in law in states, such as Ireland, that subsequently ratified the 1998 Aarhus Convention, and thereby enshrined access to information, participation in decision-making and access to justice in environmental matters. Article 6 of the Convention specifies what is necessary for public participation where *"decisions on proposed activities which may have a significant effect on the environment" (Clause 1 b) are being considered"*. Most importantly, Article 6, clause 8, specifies that *"due account is taken of the outcome of public participation"* in any decision. The extremely poor level of engagement from the public, illustrated by the low level of response to the consultations conducted by Irish Water (only 46 submissions to the Options Working Paper consultation) indicates the approach to date is flawed in two fundamental dimensions:

- citizens (both individually and in groups) have failed to identify themselves as stakeholders; AND,
- for those that *do* identify an interest in the Water Supply Project, there is a lack of confidence that it is worthwhile to participate in the process proposed.

The above highlights the profound lack of consistency on the part of Irish Water in asserting that it has undertaken "meaningful public participation", when it has in reality limited its engagement to information and consultation exercises; failed to demonstrate commitment to informing interested parties; and done very little to facilitate the involvement of stakeholders in the development of their proposal. There is no evidence of a genuine wish to develop a partnership approach with other stakeholders. There appears to be a clear democratic deficit resulting firstly from citizens remaining largely uneducated about their interests and so

unengaged, but exacerbated because the new water governance structures are not yet fully in place, so that no mechanism exists by which to attempt to secure more stakeholder scrutiny and involvement.

In this context SWAN argues that Irish Water cannot claim that its public engagement is meaningful, effective or adequate.

10. CONCLUSION & RECOMMENDATIONS

Arising from and as a result of the issues set out in this submission, including in particular

- the lack of an overarching, holistic water management approach, including integration with wider water governance and integrated catchment management under the WFD;
- the low level of engagement of the public (as evidenced in the number of responses to the last consultation) and the lack of meaningful public participation in the project and
- the very particular current policy vacuum due to the 'pending' nature of a number of crucial policies/plans of key bearing on the project, including the National Planning Framework, water governance structures, river basin management plans and overdue abstraction regulations,

SWAN believes that it is premature to make a determination regarding a preferred option for this project and recommends that any further decisions regarding the WSP be paused until these issues are addressed and all four key strategic planning, water management and regulatory frameworks are put in place.

We furthermore recommend the establishment of an integrated, inter-agency, inter-departmental Steering Group to include DECLG, EPA, LAWCO and NPWS to address the current lack of integration and afford the necessary integrated and holistic approach currently missing due to the statutory limitations of Irish Water.

APPENDICES

Appendix I: SWAN Member Organisations & Board of Directors

SWAN National Groups		SWAN Regional & Local Groups	
1.	An Taisce	16.	Carra Mask Corrib Water Protection Group
2.	Bat Conservation Ireland		
3.	Birdwatch Ireland	17.	Cavan Leitrim Environmental Awareness Network
4.	Coastwatch Europe Network		
5.	Coomhola Salmon Trust Ltd.	18.	Celebrate Water
6.	Eco-UNESCO	19.	Cork Environmental Forum
7.	Friends of the Earth	20.	Longford Environmental Alliance
8.	Friends of the Irish Environment		
9.	Irish Doctor's Environmental Association	21.	Macroom District Environmental Group
10.	Irish Peatland Conservation Council	22.	Save Our Lough Derg
11.	Irish Seal Sanctuary	23.	Save Our Lough Ree
12.	Irish Water and Fish Preservation Society	24.	Save The Swilly
13.	Irish Whale and Dolphin Group		
14.	Irish Wildlife Trust	25.	Shannon Whale & Dolphin Foundation
15.	Voice Of Irish Concern for the Environment (VOICE)	26.	Slaney River Trust

SWAN Board of Directors:	
Mark Boyden, Chair	Coomhola Salmon Trust
Mindy O'Brien, Vice Chair & Company Secretary	Voice of Irish Concern for the Environment (VOICE)
Geoff Cooper, Director	Irish Water and Fish Preservation Society
Karin Dubsy, Director	Coastwatch Europe
David Healy, Director	Friends of the Irish Environment
David Lee, Director	Cork Environmental Forum
Elaine Nevin, Director	ecoUNESCO
Joachim Schaefer, Director	Cavan Leitrim Environmental Awareness Network