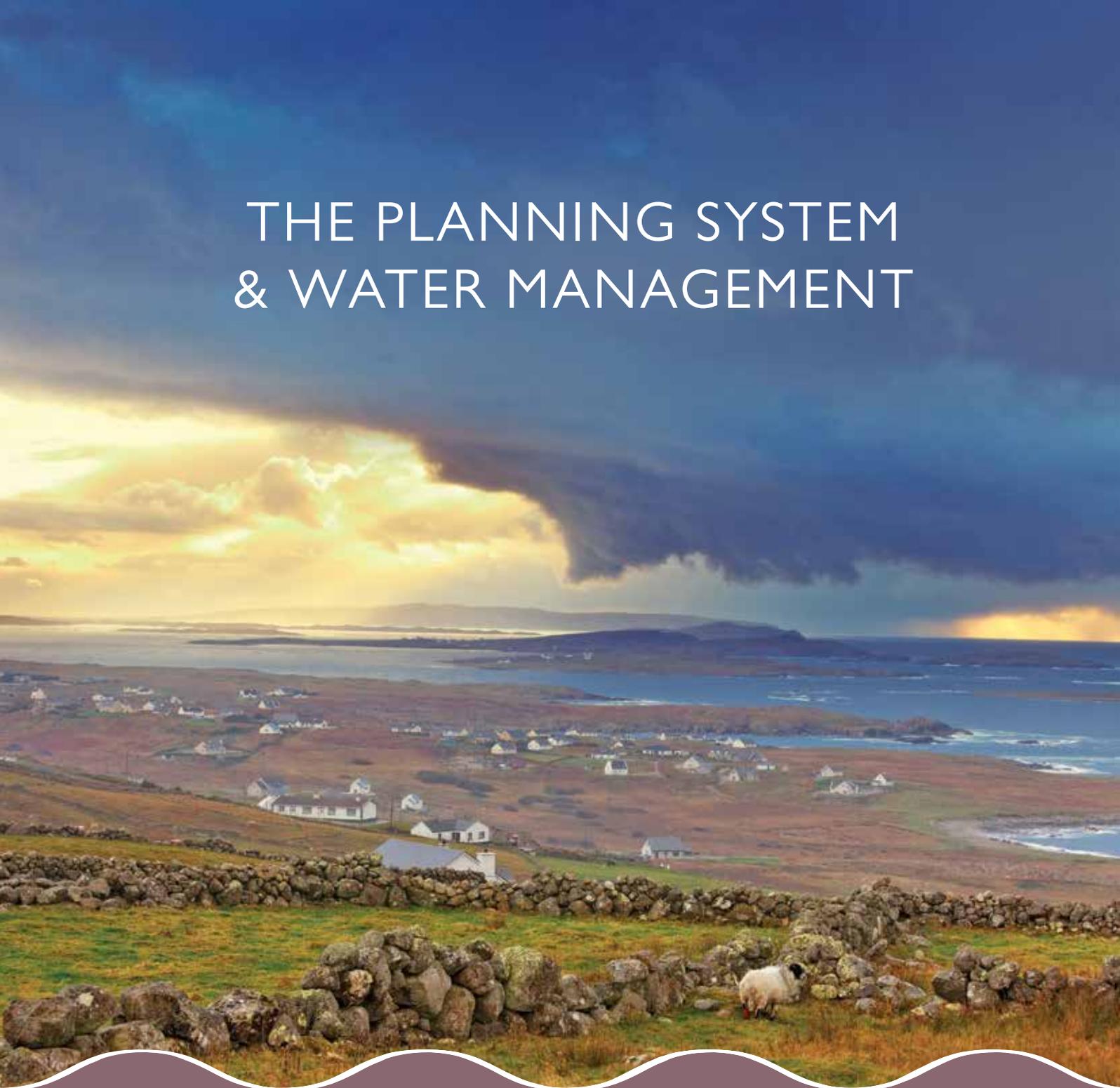


THE PLANNING SYSTEM & WATER MANAGEMENT



Introduction

Deteriorating water quality arises from human pressures placed upon our natural water systems from a diverse range of urban and rural activities, from industrial and coastal development to quarrying, land drainage and the construction of roads, housing estates and single dwellings. This broad spectrum of activities underlines the central importance of the planning system in protecting the water environment and meeting new Water Framework Directive (WFD) targets, through the regulation of land-use and physical development. To do this effectively, however, will necessitate greater integration between land and water management policy and practice.



The role of the planning system in managing water quality

The land-use planning system can contribute to protecting and improving the water environment by regulating:

- The location, scale and design of new physical developments
- Urban waste water discharges, through the matching of planning consents with the capacity of local waste water treatment infrastructure
- Cumulative impacts of new physical developments on Special Protection Areas/ Special Areas of Conservation
- New developments on floodplains, the foreshore and in unsewered rural areas
- Extractive industries e.g. quarries and peat extraction
- Wetland drainage.

What is in place and is it effective?

Planning is primarily concerned with regulating the location, scale and form of new physical developments. The role of the planning process is to manage the often competing interests of private development with the long-term economic, social and environmental interests of society. This is achieved through the development of forward planning policy (e.g. County Development Plans) and the implementation of this policy through the development control process (i.e. the planning application system). Planning law has always nominally required local authorities to take water quality and management into account. This has had limited impact, as is evidenced by the prolific scale of new development experienced in Ireland particularly over the

past 10-15 years, including in areas unsuitable from a water resources perspective.



The Planning & Development (Amendment) Act (PDAA) 2010 improved the situation by introducing greater rigor into the planning system with respect to water management including:

- Enhanced alignment between settlement planning (including zoning) and the capacity of waste water treatment plants
- An explicit requirement that local authority forward planning policies support compliance with environmental standards required under the Surface Waters and Groundwater Regulations
- A greater obligation on local authorities to implement statutory planning guidance issued by Government, e.g. The Flood Risk Assessment and Management Guidelines which prohibit development in areas at risk of flooding



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- Greater integration between the planning system, and protecting and enhancing the conservation objectives and ecological integrity of Natura 2000 sites
- Stricter regulations for quarries and peat extraction



Clonmel Waste Water Treatment Plant



- In addition, new planning regulations were introduced in 2011 to reduce the threshold above which planning permission is required for drainage of wetlands from 20 hectares to 0.1 hectare. The threshold for mandatory EIA on all wetland drainage was also reduced from 20 hectares to 2 hectares.

Each development plan must include mandatory objectives on a range of social, economic and environmental issues as prescribed by planning legislation. The development plan forms a legally binding contract requiring the local authority to control land use change in accordance with the development plan.



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de-zoned or down-zoned.

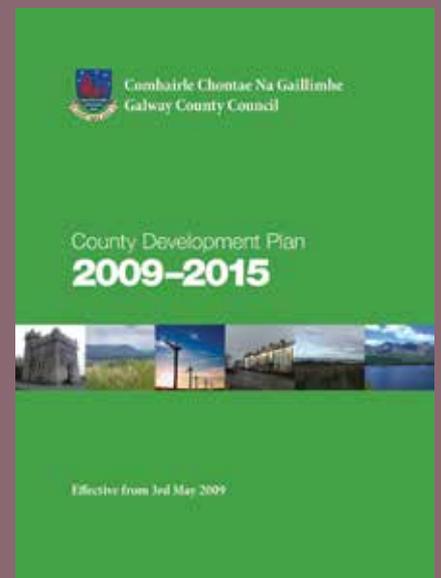
The RBM Plans identified the need to strengthen the statutory basis for integration of water quality objectives with the planning system. As a consequence, under the PDAA 2010, the policies and objectives of all development plans must be specifically aligned with the relevant RBM Plans and must include mandatory objectives for the promotion of compliance with WFD environmental standards for water.

Many recently adopted local authority development plans do generally include references to the RBM Plans and increased emphasis on the importance of water

Forward planning and River Basin Management planning

While River Basin Management (RBM) Plans are central to the integrated water management approach required by the Water Framework Directive (WFD), development plans are the cornerstone of the Irish planning system. The RBM Plans are statutory documents which require an integrated multi-agency Programme of Measures to deliver WFD objectives. Local authorities are required to prepare a statutory development plan for their functional area every six years and Subordinate Local Area Plans for settlements over 5,000 in population.

Under the PDAA 2010, each development plan must be consistent with the National Spatial Strategy, the relevant Regional Planning Guidelines, and have due regard to Ministerial policy guidance. This new 'Core Strategy' approach is important for the integration of planning and water management as it provides for the greater alignment of new development with available waste-water treatment capacity and potable water supply in accordance with the government Water Services Investment Programme. Each local authority was required to adopt a 'Core Strategy' by the end of 2011 which has seen about 30,000 hectares of development land



quality management. However, there is currently no national policy guidance on how to translate the requirements of the RBM Plans into specific provisions in local authority forward planning strategies. There is a general absence of a strategic approach to deciding the form and location of future development with regard to the environmental carrying capacity of local water environments. This may in part be due to the novelty of the RBM Planning process but also reflects the poor tradition of collaboration between planning, environment, engineering and other local authority departments on forward planning policy. Also, at a political level, the planning system is often seen as a barrier to economic and social development and as a consequence, it can prove very difficult to achieve political consensus for restrictions on new development, even in sensitive areas or where cumulative carrying capacity has been reached.

To address this, it is vital that planning policy choices are evidence-based and that these choices, and potential alternatives are communicated clearly to decision makers and to the public. The Strategic Environmental Assessment process is developing as a key tool for doing this, including the use of mapping of flood zones and sensitive groundwater to decide on zoning. However a re-skilling and resourcing of planning practitioners and environmental specialists is essential in order to effectively marry river basin management and land use planning.

Development control and River Basin planning

The development control (i.e. planning applications) process has conventionally been the key device used by local authorities to protect the water environment from new development proposals by:

- Refusing planning permission where there is an unacceptable risk of adverse impact on water quality

- Granting planning permission with specific conditions designed to protect water quality.

Planning applications must be assessed by local authority planners and/or An Bord Pleanála against the local authority development plans. However, local authority planning practitioners are poorly equipped, resourced and trained for the necessary transition of the planning system to a more integrated spatial planning system. Moreover, the planning system straddles a range of other decision-making processes administered by other regulatory authorities.



In urban areas, the 'Combined Approach' under the 2007 Waste Water Discharge (Authorisation) Regulations requires that development expansion must strictly match existing or immediately planned future capacity in urban waste water treatment plants (See DECLG Circular Letter PSSP I-10). This is extremely welcome. However, local authorities continue to come under significant pressure to grant planning permission for new development in areas where the existing waste-water treatment facility is over-capacity.

In rural areas, there are over 450,000 private domestic waste-water treatment systems in operation (e.g. septic tanks). New legislation to regulate these has recently been introduced and includes a



Dispersed rural housing in Co. Galway. The exposed rock indicates little available soil percolation for the effective operation of a septic tank

requirement for periodic maintenance, inspection and remediation where the system is shown to be ineffective. While this is very welcome, effective implementation will be key to its success.



Faulty septic tank © Limerick County Council

The changes to the regulation of new-build private waste water treatment systems through the EPA Code of Practice 2010 are also a welcome step. However, generally local authorities rely on a case by case assessment and technical solutions rather than assessment of the cumulative impact of individual planning applications for one-off rural development on the carrying capacity of water bodies.

Other types of development outside of conventional categories including quarries, peat extraction, and wetland drainage also pose a significant threat to water quality. New legislative changes to control these, as a result of European Court of Justice judgments against Ireland, represent a major challenge to the planning system as they require a specialist inter-disciplinary approach and much greater implementation.

Enforcement

Planning regulation cannot be effective in protecting water resources without adequate and consistent enforcement measures to remedy and deter breaches in the planning code. In Ireland planning enforcement in relation to developments affecting water quality is poor. In order for the planning enforcement system to become effective, major legislative, administrative and institutional changes are essential.

Traditionally in much of the country there has been very little planning enforcement in relation to quarries, peat extraction and drainage. This is due in part to confusion over the legal status of particular activities; a lack of scientific expertise in planning departments and a lack of political will to enforce against illegal operators. New planning laws have, to date, not resulted in successful control, with many unauthorised quarries still operating and thousands of hectares of peat extraction continuing without planning permission.



Peat removal from Monivea Bog, Co. Galway; a priority habitat, Natura 2000 site and one of the EU's most important peatland sites © Friends of the Irish Environment

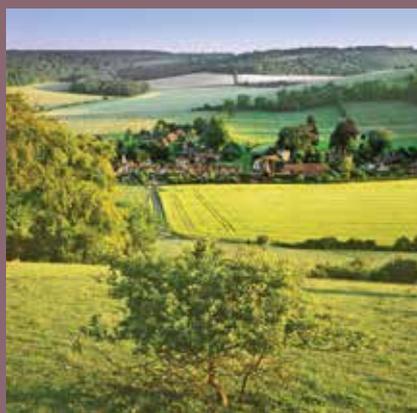
The current multiplicity of small enforcement authorities is not suitable for impartially addressing complex and interrelated enforcement cases without wider oversight. Local authorities often come under intense political pressure to

drop enforcement action and due to the burden of proof required and potential legal costs, local authorities are often reticent to pursue breaches.

Recommendations

Forward planning

- To regain public confidence in the planning system following the findings of the Mahon Tribunal, a separate independent oversight authority should be established to ensure that national planning policy is correctly implemented and to oversee complaints against planning authorities. The proposed Office of the Planning Regulator has the potential to carry out this role, but it must be provided with full independence and adequate powers and resources to do it. Its functions must also be fully transparent. *(See more under 'Enforcement Recommendations')*
- It is imperative that the DECLG publish Section 28 Planning Policy Guidance for local authorities on integrating development planning and river basin planning, as committed to in the 2010 RBM Plans



Compact village settlements in other European countries offer cost-effective group waste water treatment

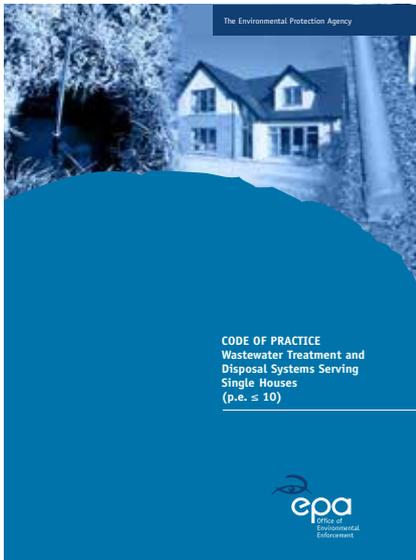
- Until data from RBM Plans and spatial mapping tools become available to planners, the 'Precautionary Approach' must be applied against new development where there is an absence of evidence demonstrating that the area has the capacity to accommodate new development

- More stringent planning requirements should be introduced for catchments of 'high status', pristine rivers and lakes, and these areas should be mapped and included in local authority development plans
- A national strategy for promoting compact settlement forms in small towns and villages should be developed to achieve more centralised cost-effective provision of water and wastewater services, including the use of serviced-sites initiatives
- Zoning policy and development control must be fully integrated with the Office of Public Works Flood Risk Hazard Maps and Flood Risk Management Plans due in 2013 and 2015 respectively.

- The existing Foreshore Licence/lease process is outdated and the current (2013) review should result in a new Marine Spatial Planning Bill to provide for a plan-led approach to foreshore development and to achieve integration with WFD and Marine Strategy Framework Directive requirements.

Development control

- A revised Circular Letter should be issued to all local authorities reminding them of their statutory obligations to implement the 'Combined Approach' to ensure that permission is only granted for development for which there is waste water treatment plant capacity



- The implementation of the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses by local authorities is inconsistent. An assessment of local authority performance and ongoing training of local authority staff is required
- The National Inspection Plan for the control of on-site private waste water treatment systems must ensure that these

systems no longer represent a significant threat to water, especially in sensitive catchments. There must be adequate levels of inspections and systematic and swift follow-up checks carried out to ensure that the necessary remediation work on faulty systems has been carried out and guidance on doing this provided where necessary

- The Government must urgently ensure that Section 261A of the Planning and Development (Amendment) Act 2010 to regulate quarries is fully implemented and all unauthorised quarries must be immediately enforced against.

Enforcement

Proper enforcement of planning legislation is essential to water quality management and the government must ensure that local authorities undertake their enforcement role effectively. In order to achieve better enforcement the following is recommended:

- The proposed Office of the Planning Regulator must be provided with a very strong mandate to oversee the enforcement function of all statutory bodies involved in the planning system, including full and independent investigation of public complaints and the undertaking of audits, performance monitoring and issuing sanctions to local authorities
- There must be adequate resources and expertise in local authorities to check on and ensure compliance
- Fines should be imposed at levels which act as an adequate deterrent, including accumulating fines and the recovery from offenders of the profits resulting from unauthorised activity, using the Criminal Assets Bureau model

- Public education and access to information in relation to planning compliance and enforcement must be facilitated through full implementation of the Aarhus Convention
- The Constitution should be amended to enable the Oireachtas to establish specialist courts to deal with environmental law.



Further reading

Guidelines for planning authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, DECLG, 2013.

Environmental Impact Assessment (Agriculture) Regulations 2011: Guide for Farmers, DAFM, 2012.

Defending Ireland's protected raised bogs from illegal extraction, Friends of the Irish Environment, 2012.
(See also www.friendsoftheirishenvironment.net/peat/peat_splash.html)

Territorial cohesion and water management in Europe: the spatial perspective, European Environment Agency (EEA), 2012.

Draft guidance for planning authorities on the drainage and reclamation of wetlands, DECLG, 2011.

Responding to the environmental challenge? Spatial Planning, Cross-Border Cooperation and River Basin Management, International Centre for Local and Regional Development, Armagh, 2011.