

## Getting it Right or Getting it Right ✓?

### Ticking boxes vs. delivering genuine public participation in water management in Ireland.

SWAN presentation to:

The joint meeting of

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the Meeting of the Parties to the Protocol on Water & Health on

‘Public Participation in Environmental Decision Making:

Focus on Water and Health’

## 1. Introduction

***Technically*** performing public participation or “ticking the boxes”, does not mean that it has been ***successfully*** carried out.

As is well documented and illustrated elsewhere, public participation carried out successfully delivers:

- Increased public awareness of issues
- Opportunities to identify & avoid risks/ mistakes
- Improved final outcomes/decision
- Cost savings & ongoing financial efficiencies
- Identification of public concerns & opportunities to address these
- Improved accountability & transparency in decision-making
- Wider acknowledgement of the legitimacy of outcomes/decisions taken
- Public support for (& engagement in) outcomes/ decisions taken.
- Enduring and sustainable solutions/outcomes

However, unfortunately there is increasing evidence of public participation initiatives undertaken, sometimes at considerable cost, and in many cases with genuine commitment on the part of the agencies and staff involved, but that do NOT deliver these benefits. Where such public participation is unsuccessful not only are the anticipated benefits not achieved, but all those involved (the public and officials alike) become frustrated and disillusioned with such initiatives. Indeed, in some cases, poor public participation may result in more negative outcomes as poorly managed expectations regarding the level of influence participation can/will have, commonly generates antagonistic responses to those outcomes.

This paper looks at the Irish experience of public participation in the implementation of the EU Water Framework Directive 2000/60/EC. It identifies the challenges that have emerged to date, and makes a number of recommendations intended to ensure delivery of improved public participation in the future.

## 2. EU Water Framework Directive 2000/60/EC

Briefly, for those who may not be familiar with this piece of European legislation, the EU Water Framework Directive recognises the fundamental importance of securing the “good ecological status” of all waters as an essential for the common good. It takes a holistic approach to the management of water resources within the EU and established an ambitious and technically demanding timetable for implementation

across all member states, based on River Basin Districts defined by large scale river drainage networks (many of which are international in nature).

The need for, and commitment to, public consultation within the Directive is clear in the preamble:

(14) *The success of this Directive relies on close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public, including users.*

(46) *To ensure the participation of the general public including users of water in the establishment and updating of river basin management plans, it is necessary to provide proper information of planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted.*

Under Article 14, the Directive makes clear that

“Member States shall encourage the **active involvement** of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans.”(14.1) (These River Basin Management Plans are the tool by which the WFD objectives are to be secured.)

In addition, specific phases for engaging the public and seeking their comments were set out:

Consultation Requirements (EU Directive 2000/60/EC, Art. 14.1)	Delivered
<i>(a) a timetable &amp; work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;</i>	✓
<i>(b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;</i>	✓
<i>(c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.</i>	✓
<i>Each of these consultation periods lasted for 6 months. In addition, the Directive specifies that access shall be given to background documents and information used for the development of the draft river basin management plan.</i>	✓

Throughout all 7 River Basin Districts (including 3 International RBDs), Ireland fulfilled these specific consultation requirements of the Directive fully:

- documents were made available in hard copy and digital format;
- public meetings were held;
- contributions from all interested parties were recorded.

### 3. Additional provision for public participation

In ADDITION to the consultation requirements specified in the Directive 2000/60/EC, Ireland made a number of further provisions to facilitate public participation. These included:

- **Advisory Councils** – These were new, statutorily-established structures, at River Basin District level, that included nominated representatives of different interest sectors (agriculture, business, environment, etc.), selected by a panel of local authority officials. They are currently in abeyance.

- **SWAN** (Sustainable Water Network) – a new, national umbrella NGO, funded by the State to support the representation of environmental interests through the co-ordination of existing environmental NGOs.
- **Additional initiatives** – funding was provided for the development of a template for a national public awareness campaign to bring water management challenges to the public’s attention & highlight the opportunity to participate in WFD implementation. SWAN lobbied for such a campaign and was commissioned to develop the template, although this was ultimately never operationalised.
- **“Unofficial” additional consultation opportunities** – SWAN was invited input to specific work packages, such as the development of the WFD Monitoring Programme, Surface Water Regulations, etc. although this was not required by the Directive. Due to the manner in which these engagements took place, it is not known whether other stakeholders were also approached to participate in this way.

The delivery of both required *and* additional measures to facilitate public involvement indicate a recognition by officials of the need to engage with the public.

#### 4. Analysis of participation

Was all this public participation successful? A fundamental measure of the meaningfulness of public participation is the extent to which it enables the public to influence outcomes or decisions. In the case of the WFD in Ireland, it is clear that little – if any – impact of public participation inputs is evident.

No amendments were made subsequent to the required public consultations on:

- the timetable & workplan for development of the River Basin District Plans
- the significant water management issues identified in each River Basin District
- the draft River Basin District Plans themselves,<sup>1</sup>

The **Advisory Councils** had no impact on the substantive content of the River Basin District Plans. These bodies were dominated by local politicians whose attendance and understanding was poor and otherwise consisted of the “usual suspects” of organised and well resourced interest groups (such as the farming and industry sectors). While SWAN co-ordinated representation of environmental interests, “social & community” representatives (if they could be identified to take part at all) were tasked with the near-impossible job of representing the full range of social interests without any support network behind them. Of the 7 RBDs, only 2 had a representative from the community sector, and this on Councils consisting of between 16 and 53 members. There were evident and significant imbalances between participants. Participants also reported high levels of frustration at spending the vast majority of their time listening to presentations from consultants. The limited time remaining for discussion was mostly of either a general or ‘grandstanding’ nature and in the main did not involve concrete agreements or decision-making. Most significantly, the Advisory Council’s had NO mechanism through which to actively influence the work of implementation itself.

No **public awareness campaign** was carried out, despite the investment of resources in the production of a template for this, commissioned from SWAN. While the NGO argued strongly that increased involvement could not be hoped for, unless wider awareness was raised, no action to address this deficit was taken, not even a low budget streamlined version of the campaign in the context of declining public sector funding. In

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<sup>1</sup> SWAN did manage to secure some changes to the final River Basin Management Plan, but this was as a result of later actions, see section 5 below, “B. Traditional Antagonistic engagement.”

the absence of any engagement with the wider citizenry, SWAN became effectively a surrogate representative of “the public” in the implementation process. This created real challenges for SWAN, in confusing the role and expectations of an NGO established with a clear environmental mandate, but ultimately having to make the fundamental case for public participation.

**SWAN**, as the umbrella NGO representing environmental interests, engaged in every public consultation, its inputs being based on its own extensive consultation exercises conducted within each River Basin District and specialist knowledge that it pulled together to contribute. No changes were made to the substantive content at any stage in response to their submissions.<sup>2</sup>

#### What happened to all the public participation inputs?

Addendums *were* published to reports at each consultation stage listing the points made in written consultation submissions, in some cases providing a brief tabulated response. It is unclear whether these included inputs made at public consultation meetings conducted by officials. However, no changes can be identified as having been made in response to these.

It is an indictment of the consultation process that the wider public remained almost entirely unaware of the Water Framework Directive or its implementation. In an independent survey commissioned by SWAN only 12% considered environmental water management issues important<sup>3</sup>. Amongst those who participated in consultation processes and took time to submit detailed position papers, there is deep frustration and disappointment at the lack of meaningful response to their input.

## 5. Was there *any* impact on the process from public inputs?

There are two instances where impacts on outcomes can be identified. Most importantly, both were “**unofficial**” and outside the consultation process or structures set up either under the Directive itself or by the Irish State.

### A. An invitation to make additional inputs

SWAN was invited to make an input in work packages **not** open to general public consultation. It is not known whether similar invitations were extended to other specific groups, but these work packages were not open to general public consultation. SWAN was approached specifically to

- better balance the interests represented in the discussion, speaking for the environment, given the overriding political impetus to support agricultural and business development
- bring specialist, expert knowledge to the deliberations

The NGO was **not** invited in response to a perceived need for more meaningful public participation.

SWAN was only able to contribute at this sophisticated and specialised level through the support of sympathetic academics. However, clearly officials recognised the value of these inputs, and moreover they *did* influence the final outcomes from these work packages. However, the “unofficial” nature of these consultations meant that there was no recognition of the role of the NGO in the process. The officials selected which sectors of “the public” to engage, and were happy to take their inputs and use these, but were not actively open about it having taken place, and access to information as to the extent of influence of any party on the outcomes is not available. This suggests that keeping the engagement quiet, made it “safer” for the officials concerned.

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<sup>2</sup> See point above

<sup>3</sup> ‘SWAN National Survey of Baseline Attitudes to Inform a National Public Awareness Campaign on Water’, Marketing Partners, December 2008

## B. Traditional antagonistic engagement

At the 11<sup>th</sup> hour, when the River Basin District Plans were about to be signed-off by the Environment Minister and ultimately submitted to the EU, SWAN found itself in the position of having been unable to influence the substantive content of the actual Plans – the Master documents. In a last ditch attempt to achieve some changes in areas considered especially poor and inadequate, SWAN had to revert to traditional forms of NGO /Government engagement and stage an exposé-type media stunt outside government buildings, threatening complaints to Europe, if the Plans were not amended. As a result, SWAN were called to a lengthy last minute meeting with senior officials which led to some concessions in the Plans. Neither the NGO nor the officials were happy with the outcomes, and much of the goodwill built up through efforts to work together over the preceding 5+ years was negated.

## 6. What lessons can we learn? (I)

### **Structural and procedural constraints of government**

When the public are invited to engage in discussing issues around water management, they are often unaware of the present systems and structures of government that are currently in place affecting this. They will willingly assist in identifying problems and seeking solutions, and experience from elsewhere has shown that they are often able to reach consensus on these. However, they will be frustrated if the solutions that they identify – *in working with officials* - are ultimately deemed unworkable because of the existing governance arrangements. This is exacerbated if examination of the issues has shown the governance structures and systems themselves to be flawed and a significant part of the initial challenge. The inability to deliver inter-departmental/inter-agency action, sometimes even to seek such action, is generally deemed unacceptable to those participating in seeking to address an issue. Clearly, if only a limited range of options or arena for actions is possible, this should be made clear at the outset of any public engagement. However, often this is not done, and the limitations may not necessarily be recognised by officials that engage with the public as they are so familiar with the constraints of the system they work in. In becoming involved, members of the public are acknowledging that the issue is relevant and important to them. This motivates them to develop comprehensive solutions, and they will work on the assumption that in a democracy, government seeks to deliver optimum outcomes for the people. So, when they and officials, working together, identify such outcomes, they have little patience with being told “that can’t be done”, when with sufficient political will it could be achieved.

Ironically, the officials involved may be equally frustrated by the system of governance as they work to deliver policy objectives, or secure required outcomes. This is especially so if they work in good faith with members of the public and identify optimal outcomes, but cannot proceed to deliver these. These officials then often find themselves having to explain and defend a system of governance, in which there appears to be no political will to effect demonstrably necessary change. In such a context public participation is to some extent handicapped before it begins.

Ultimately both the public and officials involved are likely to experience a deterioration in their working relationships, increasing cynicism, and lack of willingness to engage in the future, due to restrictions beyond their control.

A clear example of this in our case study is the distinct and apparently unassailable independent operation of government departments. The Department of Environment, Community and Local Government was tasked with responsibility for implementation of the Water Framework Directive, but challenges for successful water management require action in relation to agriculture, forestry, mining, etc. Yet, the Department of the Environment has no ability to require or command the co-operation of the Departments responsible for governance of these activities. As a result, the only measure applied to curtail excessive and damaging nutrient management on farms is the EU Nitrates Directive which is an entirely separate piece of EU legislation, for which the Department of Agriculture is responsible in Ireland. This is widely

acknowledged as highly unlikely to generate the necessary reductions in nutrient inputs, but the Department of Environment has no authority to command further action on the part of farmers. It is similarly constrained in relation to controls on forestry, mining, aquaculture, etc. This is symptomatic of a problem that has bedevilled WFD implementation in Ireland, namely a reliance on other existing legislation to deliver the requirements because of the difficulties in making further demands in areas overseen by other Departments. A pervasive and persistent problem of a lack of policy integration is apparent at all levels. This analysis is not to say that environmental objectives should always “trump” others, but rather that they need to be considered a priority for delivery by all Departments, who must appreciate their fundamental importance.

In an era of “joined up government”, the public and politicians are both increasingly aware of the need to communicate and co-ordinate between functions and agencies of State to ensure the effective and efficient delivery of policy objectives. As a result, where the political will exists to ensure responsive government, it is possible to reform governance structures and systems. Fundamentally, unless government is able and willing to be flexible where necessary, public participation is likely always to be limited, only able to deliver limited added value, and it is probable that government will not be as effective as it could and should be. Yet the public are fully aware of the complexity involved in decision-making and can be useful – even vital – partners in addressing challenges of government, including the area of environment. Daily living means most people are aware that life is like a tapestry and that if one thread is pulled it can affect the pattern in far-reaching ways. In order to manage outcomes, most are prepared, and appreciate the need, to work with other interests in reaching acceptable solutions.

## 7. What lessons can we learn? (II)

### Very poorly developed culture of participation

In Ireland, while many officials involved in WFD would hotly defend the engagement with the public that was undertaken, the demonstrably ineffective nature of that public participation, illustrates the absence of a culture of involvement.

It is necessary for the public to have some awareness of the issues involved and of the opportunity to engage, if meaningful public participation is to take place. However, this point appears not to have been recognised by officials. Implementation of the Directive had been underway for over 5 years, before a template for a public awareness campaign was commissioned from SWAN. The failure to follow-through and actually commission or undertake **any** public awareness-raising actions, in face of the repeated and strong representation on the need for this, might cynically be interpreted as a conscious decision to limit public participation that might complicate, for officials, their already challenging tasks of implementation.

In an institutional context where public participation is poorly developed or understood, the very complex and demanding nature of WFD requirements meant that officials were even less inclined than usual to partake in meaningful and, for them highly challenging, public engagement exercises. The culture was (and remains) such that most never contemplated allowing stakeholders to have a say in decisions. It is apparent that most officials did not and do not realise that this is what public participation is about. With no acknowledgement of the need to bring in expertise, SWAN was the only active participant able to point out these shortcomings, and this input was taken as personal criticism.

Four negative aspects of the present culture are demonstrated in our case study:

- A failure to fully grasp the benefits of good public participation;
- Structures and systems of governance that limit the potential and conduct of public participation;
- An absence of commitment to introducing effective public participation;
- Lack of understanding of what good public participation requires (expertise).



In such a context, where there is a requirement for public participation it is likely that poor exercises will be added on to processes in order to “tick the box” as was the case with WFD implementation in Ireland.

Yet, where the input of stakeholder groups was seen as valuable or necessary, engagement was quietly but unofficially undertaken. SWAN’s invited inputs to the Surface Water Regulations and Monitoring Programme, were examples of these. However, the “off the record” nature of these engagements, suggests that officials felt a strong need to control and direct stakeholder inputs; who made those inputs, when, on what, and to what extent they were involved in discussions.

The manner in which the required public consultations were conducted, and the “unofficial” use of SWAN’s input highlight the absences of a culture of open involvement and partnership. Arguably it demonstrates some apprehension amongst officials that their authority may be undermined or challenged by allowing the public a genuine ability to influence processes and outcomes. This suggests a lack of clarity regarding their distinct role and position in ultimately having to balance diverse interests and views that participation illicitly, and almost certainly it also shows a lack of confidence in their ability to secure positive outcomes from a partnership approach to engaging with the public. To pick up on the tapestry analogy above, all stakeholders that make up “the public”, know that it is ultimately the weaver that will control the actions taken, but they want to ensure that the implications of all possible options, and their views on these, are considered, so that the weaver can take the best course of action. Engaging the public should not be seen as a route to chaos, but if done well, rather as a means for delivering better results.

## 8. What lessons can we learn? (III)

### Lack of expertise in engagement

Throughout implementation of the Water Framework Directive, there has been a clear failure to recognise the need for investment of time and expertise to deliver effective public participation. Such investment need in no way reduces the cost-effectiveness of meaningful engagement with the public – rather it ensures that it is achieved! Getting public participation right, requires a knowledge of how the process works from the initial awareness-raising, through management of expectations (on all sides), process design, delivery, the development of outcomes, evaluation, future iteration, and feedback. While there was considerable investment in expertise for the delivery of methodological, scientific, and technical objectives, the authors remain unaware of any public body concerned with delivery of the WFD seeking any specific expertise in the design and delivery of best-practice public participation

Firstly, it is vital that this expertise is recognised and valued appropriately. It is important that investment takes place to secure in-house expertise of this nature within government agencies. External skills and expertise clearly have a role to play in developing such capacity internally, but may also continue to add credibility and enhance a more collaborative relationship in the longer term.

While existing governance may create impediments to sophisticated partnership with the public, this should not delay or prevent agencies engaging the public. Procedural means for delivering public participation must be developed with a clear awareness of the existing context (structural, cultural, etc.), and the expertise to optimise the engagement possible within this context. This can be achieved with a commitment on the part of the agencies involved, even in the absence of a fundamental political will to create a more responsive system of governance and providing they have access to the appropriate expertise.

## 9. Summary recommendations

**Short –term:** In the short term it is essential that engaging with the public is done in a realistic, honest and transparent manner, acknowledging existing political and structural constraints. This means identifying meaningful opportunities for public involvement where the public can actually influence outcomes, managing expectations accordingly, designing appropriate processes (including awareness-raising) and

delivering these effectively. If an agency does not have this expertise in-house, then it is vital that outside expertise is brought in to initially carry out these steps and in the medium term to train and support appropriate staff to take responsibility for it.

**Long-term governance issues:** The very systems and structures of governance themselves must be receptive to public proposals for action, and responsive where deliberations (involving the public) show that internal change is merited. In the case of water management in Ireland, the fragmented nature of the administrative and regulatory roles demonstrates a need for a far greater degree of integration and clearer lines of responsibility and control, whether through a single agency or the reform of existing agencies' roles and decision-making. It is vital for success that where an agency or arm of government is tasked with delivery it can command the genuine and significant collaboration of others government agencies / Ministries where their participation is necessary to complete the task.

Within government, there need also to be mechanisms (structures and systems) in place that genuinely facilitate and support active public participation. To involve the wider citizenry, it must be aware of the issues, of opportunities to participate, be equipped to engage, and informed as to outcomes. Delivering this must become a primary task of government.

**General:** A number of fundamental measures are necessary to develop a culture of good public participation and facilitate its delivery:

- There is a vital need to develop an understanding, within both political and executive functions of government, of the extensive benefits that good public participation can deliver.;
- Integrate public participation into systems and structures of governance;
- Habitually plan for appropriate and effective public participation;
- Recognise that highly specialised skills and experience are necessary to foster a culture of positive public participation;
- Invest in such expertise in the design, delivery, evaluation and development of public participation.

Success in achieving positive outcomes will stimulate the further use of such public participation and ultimately its integral part in governance systems. This will in turn support and assist officials in the execution of their functions, and generate better outcomes for the public