

**SPEECH BY**

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**AT THE**

**IRISH CONCRETE FEDERATION & IRISH MINING AND QUARRYING SOCIETY'S**

**'PLANNING AND ENVIRONMENT SEMINAR'**

**KEADEEN HOTEL, NEWBRIDGE**

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## **Introduction**

Ladies and Gentlemen

Good morning. I would like to thank Gerry Farrell, CEO of the Irish Concrete Federation, for his introduction.

It gives me great pleasure to be here this morning to launch the new Biodiversity Guidelines for the Extractive Industry and also to highlight the changes that my Department is making to improve our planning system. The Irish Concrete Federation and the Irish Mining and Quarrying Society have put together an interesting seminar here today and, along with their Presidents - Christy Loughnane and Sean Finlay - are to be congratulated for providing the forum for such a thought provoking range of topics.

As you may be aware, I am currently progressing the Planning and Development (Amendment) Bill through Seanad Éireann.

The purpose of this Bill is to amend the Planning and Development Acts, with the principal aim of supporting economic renewal and promoting sustainable development.

### **Planning System reform**

Planning is about people and improving their quality of life. For this reason, I have taken a very hands-on approach to improving the planning system since I took office.

I have introduced a suite of guidance on sustainable residential development and the integration of schools provision within the planning process. New guidance is also in preparation in relation to local area planning, flooding and controlling development along national roads.

I introduced new regulations last year to encourage the uptake of cleaner and cheaper energy from renewable sources in the industrial, business, and agricultural sectors by providing exemptions facilitating a greater penetration of renewable technologies in these sectors.

I have taken a strong stance with certain local authorities by issuing directions requiring them to amend their development plans where they have included excessive or inappropriate zonings; indeed it is the problems highlighted by this latter issue that has been a strong motivating factor for me in developing the Planning and Development (Amendment) Bill.

### **Planning Bill**

I have long believed that if we can achieve greater certainty and innovation and introduce greater participation at the forward planning stage the vast majority of the planning issues that we face as a society – over zoning, inadequate provision for public transport, community infrastructure and amenity – can be addressed and corrected. Strong action to deal with these issues is contained in the Bill.

Guidance on issues such as sustainable residential development, wind farm development and flood risk management will also have much greater legal force under the Bill.

I intend, with this Bill, to address the broader environmental and sustainable communities' agenda. I have introduced provisions which will support the climate change agenda by requiring that development plans must contain mandatory objectives for the promotion of sustainable settlement and transportation strategies, including appropriate measures to reduce greenhouse gas emissions.

The planning system must be inclusive of all sectors, all interests, and all members of society. It must also provide clarity and certainty to stakeholders who rely on forward-looking land use plans to inform their own strategic objectives.

This Bill will ensure that the development plan better achieves its vision for a realistic and sustainable future. In setting this vision, the development plan must set out a strategic spatial framework for the area which clearly presents for key stakeholders and the general public the location, type, scale and phasing of development.

This will help to provide greater clarity and certainty for key stakeholders – elected members, business, infrastructure departments and agencies, as well as the general public – by providing critical high-level development planning information of how the area is to evolve over the lifetime of the plan. This should also allow development to occur in the right locations and in a logical and sequential manner, thus ensuring that the State can plan and prioritise the provision of key infrastructure with much greater certainty and achieve the optimal return for its investment – a critical target in today’s tough times.

### **European Court of Justice Judgment**

Given the theme of today’s conference, I would like to specifically mention a recent European Court Judgment concerning the Irish regime for retention planning permission in relation to projects covered by the Environmental Impact Assessment or EIA Directive. This ruling arose in the context of the Derrybrien wind farm case but it has far-reaching implications for all developments requiring EIA.

As you all know, it is a core principle of the EIA Directive that prescribed categories of projects above certain thresholds and sub-threshold projects that would have a significant impact on the environment must both be subject to prior environmental impact assessment and planning consent. In its judgment, the European Court found that, in Ireland, the requirement for a prior EIA could be circumvented by obtaining retention permission.

We are legally obliged to implement all the necessary measures to give effect to this judgment. As of July last year, the clock has been ticking on Ireland's response and we have been working towards a resolution to these complex issues in partnership with the European Commission.

Failure to adequately address the Court's judgment will inevitably and ultimately lead to further proceedings and possibly fines against Ireland. We cannot and will not let it come to this.

In response to the judgment, we are proposing:

- to remove the possibility of obtaining retention permission for all development requiring environmental impact assessment under the EIA Directive,
- to provide, in exceptional and very limited cases only, for the regularisation of development coming within the scope of the EIA Directive, and
- to strengthen the planning enforcement system.

These required legislative amendments will be made through the aforementioned Planning and Development (Amendment) Bill, which is to be debated at Committee Stage in Seanad Éireann this afternoon and which I intend to have enacted at the earliest opportunity.

The ECJ was critical of several aspects of the planning enforcement regime in Ireland, and not least the existence of retention permissions for EIA projects.

The proposed curtailment of the right to seek retention permission will eliminate some of the weaknesses identified by the Court, particularly in relation to developments coming within the scope of the EIA Directive. However, I want to do more on the enforcement side.

In this regard, it is my intention that further committee stage amendments to the Planning Bill will also provide for further improvements to the planning enforcement regime including;

- Substantial increases in the minimum fines for persons convicted of planning offences,
- The introduction of administrative standards to be achieved by planning authorities in carrying out their enforcement responsibilities, particularly where such enforcement relates to implementation of EU Directives,
- The removal of the 7-year time limit for taking enforcement proceedings against unauthorised EIA type developments, and
- The closure of legal lacunae in relation to the enforcement of Section 261 of the Planning Act.

It is stating the obvious that Ireland does not want to be on the wrong end of European Court Judgments. Both from a reputational and financial perspective, there is a lot to be lost if we do not fully embrace all aspects of the European Environmental Directives that we are committed to.

However, ECJ judgments can offer an independent and impartial assessment of Ireland's performance in relation to the transposition and implementation of EU Directives. In this regard, ECJ cases can be a positive catalyst for introducing improvements to the Irish planning and environmental protection regimes. This has certainly been true in relation to waste management.

### **Quarries**

While the ECJ judgment affects all EIA projects, it has a major impact on the extractive industry and quarries in particular. The construction boom generated a massively increased demand for aggregate-based products such as concrete and road stone.

This is clearly borne out by the fact that in 2006 Ireland consumed over 30 tonnes per capita of aggregate-based products – at the time, the EU average was 7.5 tonnes per capita.

Unfortunately, the pressure on quarry operators led to cases of unauthorised expansion of aggregate production; some of these cases would, no doubt, have required EIA had prior development consent been sought. The extent of the problem is highlighted by the number of complaints concerning alleged unauthorised quarries made to the EU Commission and the European Parliament in recent years.

The extractive industry in Ireland is vital in terms of providing the necessary raw materials to facilitate construction. Once Ireland's economy recovers there is likely to be increased pressure to produce aggregate based products once again. We cannot allow unauthorised quarries to spring up or continue to operate into the future; a scenario that I am 100% sure would result in further EU litigation and fines.

We need to ensure that responsible quarry operators are rewarded with a streamlined and more efficient administrative system but that “rogue” operators are closed down once and for all.

I do, however, recognise that there are many legitimate quarry operators with a good environmental track record who may have expanded during the “Celtic Tiger” years and, through an oversight, neglected to obtain the necessary planning consents.

As part of the series of measures proposed to the Commission in response to the Derrybrien ruling, we are including limited provision in the Bill for regularisation of unauthorised quarry developments. The proposal is for a strictly time-limited provision to enable certain categories of quarry coming within the scope of the EIA Directive to apply for regularisation of quarry extensions or intensified activities. I am optimistic that this provision will ultimately receive the Commission’s blessing as part of the range of measures proposed.

However, quarry operators that continue to flout planning laws will be pursued with renewed vigour and will be closed down.

Ultimately, I believe that an efficient and transparent system for licensing quarries will be required and I am considering, in consultation with the Office for Environmental Enforcement (OEE), how we can establish and introduce an environmental licensing system for quarries, possibly under the control of the OEE, which would supplement the normal land use planning system.

The legislative and administrative changes proposed should bring clarity and confidence to the extractive industry and I know that the ICF support a robust regulatory regime that rewards prudent operators with certainty and a reduced administrative burden while strongly enforcing sanctions against unauthorised “rogue” operators.

There are clearly environmental concerns at the heart of many of these ECJ cases and we must remember that our actions can have both immediate and longer-term impacts on the surrounding environment. In order to be able to understand what those impacts are and how we might mitigate or eliminate them, we need a solid information base to track and measures changes.

To this end, my Department is working with Friends of the Irish Environment in commissioning a pilot project on industrialised peat extraction through University College Cork. The purpose of the project is to assess the use of remote sensing and Geographical Information Systems to evaluate the current industrial extraction levels of Ireland's peat lands. There is clearly a need to map the extent of extracted lands in relation to quarry and peat extraction developments so that old and new extracted areas can be readily identified. I look forward to receiving the final results of this study in due course.

## **Conclusion**

My other function here this morning is to launch the *Biodiversity Guidelines for the Extractive Industry*, which were prepared by the National Parks and Wildlife area of my Department, and I would now like to focus your attention on the publication of this newest set of guidelines calling for the protection of Ireland's natural environment.

**ENDS**