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**Submission to Consultation on the regulation of costs payable in matters  
prescribed on foot of section 294 of the Planning and Development Act 2024  
(Scale of Fees)**

The Irish Wildlife Trust would like to express serious concern over the changes to the scale of fees being proposed in this public consultation. If these changes were to come into force, it would effectively prevent any civil society organisation or member of the public from holding decision makers to account on serious breaches of environmental law.

**Current state of nature in Ireland**

The latest Article 17 Habitats report showed that 90% of Ireland's protected habitats are in bad or unfavourable condition with 51% showing deteriorating trends across their national ranges. The Government is failing to properly fund the management and effective protection of these areas and consistently failing to enforce EU and national environmental law. These are some of the reasons why it is vital that civil society have the opportunity to hold those responsible for the continued degradation of the environment accountable.

**Impact of the proposal to access to justice**

These changes will allow the State to have control on the quality and level of challenge that the public will be able to have on them by limiting the amount of awards that can



be won. Civil society, including local groups, charities and NGOs, do not generally have huge amounts of money available for litigation and many people working in these

sectors do it voluntarily or on lower salaries in order to try and make positive changes for society. NGOs rely on the assurance that if they win a case, showing that the Government is not upholding their requirements under environmental law, that they will be reimbursed and not left bankrupt under insurmountable legal fees. By setting the limits of fees that can be won, it also limits the quality of the legal representation which the public can employ. Current rules allow for a 'no foul, no fee' basis and helps to ensure that only legally robust cases are taken on board, as lawyers would be reluctant to take on cases which cannot be won. The fact that those who could be challenged, such as public authorities, Government departments and developers, would not face the same limits on fees shows a clear denial of access to justice and a negative result for Irish democracy. These changes will restrict, and most likely end, public interest environmental litigation which is unlawful under the Aarhus Convention.

### **Consultation period**

Article 6.3 of the Aarhus convention states, '**The public participation procedures shall include reasonable time-frames** for the different phases, allowing sufficient time for informing the public and for the public to prepare and participate effectively.' This important and complex public consultation was conducted over the extremely busy Christmas period which we believe to be unacceptable from the Department responsible for the implementation of the Aarhus convention. Over 100 pages of new material were added on the 9th and 23rd of December, making the limited time period for fully comprehensive submissions even more difficult.

### **Conclusion**

In Ireland, environmental litigation has played a key role in ensuring compliance with national and EU laws that are in place to safeguard the natural environment for the benefit of society. We recommend that the Government prioritises ensuring that planning decisions comply with these laws and that the environment will not be adversely affected. It is in the public's interest to ensure that the environment is protected in order to increase resilience against the impacts of climate change and save



on expensive climate mitigation measures in the future. There are numerous reports and warnings from climate experts globally that we are reaching and surpassing critical

tipping points in regards to climate change. It's vital to ensure we are doing everything possible to minimise the impacts we will see. Ireland has already faced marine heatwaves and multiple adverse weather events in past years and we are on track for these to exacerbate. It is universally agreed that healthy marine and terrestrial ecosystems help to mitigate against climate change and the Government must recognise this in the planning decision making process rather than restrict access to justice.

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Kieran Flood  
Chief Executive Officer  
Irish Wildlife Trust

