

9th February 2021

Senior Planner, Planning Department, Kerry County Council, County Buildings, Rathass, Tralee.

Re: "Proposed Material Alterations to the Draft Corca Dhuibhne Electoral Area Local Area Plan 2020-2026"

A chara.

Thank you for your authority's work in preparing the "*Proposed material alterations to Corca Dhuibhne Electoral Area Local Area Plan 2020-2026*" (the proposed material alterations).

As your authority will be aware, a key function of the Office is the assessment of statutory plans and strategies to ensure consistency with legislative and policy requirements relating to planning. This includes a requirement to make submissions on statutory plans, including any observations or recommendations the Office considers necessary to ensure the effective co-ordination of national, regional and local planning requirements.

Recommendations issued by the Office relate to clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28. The planning authority is required to implement or address recommendation(s) made by the Office.

Observations take the form of a request for further information, justification on a particular matter, or clarification regarding particular provisions of a plan on issues that are required to ensure alignment with policy and legislative provisions. The planning authority is requested by the Office to action an observation.

A submission can include advice on matters that the Office considers would contribute positively to the proper planning and sustainable development of the area. The planning authority is requested by the Office to give full consideration to the advice contained in a submission.

On adoption of the proposed LAP, the Office will consider whether the LAP has been made in a manner consistent with the recommendations of the Office and whether the plan sets out an overall strategy for the proper planning and development of the area concerned.

The Office has evaluated and assessed the proposed material alterations under the provisions of sections 31AO(1) and 31AO(2) of the Planning and Development Act 2000, as amended (the Act). This submission makes 1 recommendation and 3 observations.

Overview

The Office supports and endorses the overall approach of your planning authority to the making of a new Local Area Plan for the Corca Dhuibhne Electoral Area. It is recognised that your planning authority has had to take tough decisions on the future distribution of and accommodation of growth across the plan area, within a context of competing legislative, policy and economic pressures and, overall, the Office considers the proposed plan achieves a balanced approach.

In particular, the Office welcomes the response of your planning authority to draft LAP Recommendation 2 in amending the land use zoning of a critical land bank adjacent the core of the town to provide for more housing, in the right location for more people.

In addition, the Office welcomes the integration of observations 2-7 into your Plan, which will, inter alia, help resolve the issue of unfinished housing development in Castlemaine, improve the implementation of regeneration areas in your plan area, and ensure the implementation of better urban environments for pedestrian and cyclists, thereby strengthening your county's response to climate change.

Although the Office considers your authority's response to draft LAP Recommendation 1 of our submission 02/10/20 to be less than ideal, in view of the report of your Chief Executive the decision to retain this non-sequential zoning of Council-owned land is accepted. Your authority is advised to consider how best it will provide appropriate infrastructure to better integrate the subject site with the town in order to mitigate the potential isolation of future residents, especially if it is to accommodate a social housing scheme.

However, as set out below, the Office has some serious outstanding concerns about important aspects of your Plan. These relate, in particular, to the proposed management of flood risk within the Local Area Plan. The following recommendations and observations of the Office should be

seen within the obligations on your authority to avoid the very real risk that occasional flood events pose to the people and property of County Kerry. In this regard your authority will be aware, from its adopting of the Kerry County Council Climate Change Adaptation Strategy 2019-2024, of the increasing risk floods present due to ongoing climate change and the necessity of the planning system to take due account of same.

In this regard, whilst the Office acknowledges the difficulties of trying to resolve, at material alterations stage, the critical flood risk issues raised in draft LAP Recommendation 3, the approach proposed in the draft falls short of the requirements of the relevant guidelines and of the Kerry County Development Plan 2015-2021 (section 10.19.3.2 and objective NE-70).

Finally, the Office would like to take the opportunity to commend your planning authority for its use of interactive GIS in the plan making process, which is considered to represent best practice and can be anticipated to increase the public's understanding of the Plan and how it relates to their local area.

1.0 Arising from the response to <u>draft LAP Recommendation 1</u> of the Office's submission

In accordance with the detailed requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (DEHLG & OPW, November 2009) the Office specifically required, under draft LAP Recommendation 3 of its submission, that the draft LAP '*must demonstrate that the sequential approach has been carried out for each proposed zoning in accordance with the Guidelines for Planning Authorities on Flood Risk Management (2009), inclusive of the Justification Test, as appropriate.*

For clarity, under section 4.23 of the Guidelines, where a planning authority is considering (in the plan) the future development (for vulnerable development) of areas at a high or moderate risk of flooding, that would generally be inappropriate under the sequential approach (section 3.2), the planning authority must be satisfied that it can clearly demonstrate on a solid evidence base that the zoning or designation for development will satisfy the Justification Test for the plan making stage (Box 4.1).

The published material alterations, including the revised zoning maps and the Strategic Flood Risk Assessment (SFRA), would indicate that the sequential approach has not been applied to the proposed zonings. In addition, a Justification Test for the proposed zonings has not been applied, as it is proposed to be delayed to the development management stage (SFRA, Table 4-1, refers). This approach is not consistent with the Guidelines which require that the Justification Test be undertaken at plan stage, and not left to the planning application stage.

Lands within the flood risk zone are proposed to be zoned to accommodate highly vulnerable uses, in particular in Castlegregory and Castlemaine, and to a lesser extent to Dingle. In this respect the draft LAP, as amended, is inconsistent with the aforementioned requirements under section 4.23 of the Guidelines. Furthermore the SFRA of Annascaul fails to determine the flood risk for proposed rezoning, as Village Centre, land along the banks of Owenascaul River (MA 38 refers). In addition, no flood risk maps have been provided for Ceann Trá or Fieries, despite the SFRA (table 4-1) identification of proposed land use zoning as potentially at risk of flooding.

MARecommendation 1 - Flood Management

Having regard to the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (DEHLG & OPW, November 2009), and arising from Recommendation 3 of the Office's submission on the draft LAP, the planning authority is required, in view of its Strategic Flood Risk Assessment and the associated flood risk maps included as material alterations, to demonstrate that the requirements set out in the Guidelines in relation to sequential approach and Justification Test have been fully complied with.

Finally, the omission of the proposed flood storage area from Dingle is of concern. The initial proposal to include a flood storage area was a proactive approach to flood risk prevention, which has the potential to act as an exemplar to other planning authorities. The flood storage area would have mitigated the flood risk to the multitude of existing residential and commercial properties situated along Bóthar an Spa and An Meal.

MA Observation 1 - Flood Storage Area

In view of the flood risk identified for Dingle town along Bóthar and Spa and An Meal (Map 3 D.2 of the Material Alterations) and the positive approach taken by the planning authority in the draft LAP to mitigate the potential significant flood risk to vulnerable residential and other properties through the inclusion of a flood storage area at Bóthar an Spa, the planning authority is strongly advised to reconsider material alteration no.6.

The 'Implementation of SEA Directive (2001/42/EC): Assessment of the Effects of Certain Plans and Programmes on the Environment Guidelines for Regional Authorities and Planning Authorities' were issued by the Minister under section 28 (November, 2004)

The Guidelines provide that consideration of likely significant effects on the environment includes the effects on, inter alia, population, human health and material assets.

It is not evident from the Environmental Report Addendum for the SEA of the draft LAP (January 2021) (the ER Addendum), that potential for significant environmental impacts (of the proposal to zone lands within flood risk zones A and B for uses that are highly vulnerable or vulnerable to flood risk has been subject of an appropriate level of assessment in accordance with the Guidelines.

In particular, potential significant impacts might be expected to arise on population, human health and material assets where lands zoned for residential development or education facilities are subject to flood risk zone A and B. In relation to Castlegregory, where wastewater treatment infrastructure is proposed within the coastal flood risk zone, in addition to the risk to material assets and to public health, there may also be potential for significant effects on biodiversity, fauna and flora, including European sites, were a future WWTP to become inundated during a coastal flood event.

MA Observation 2 - SEA

Arising from Recommendation 3 of the Office's submission on the draft LAP and the Environmental Report Addendum for the SEA of the draft LAP (January 2021), it is advised that the strategic environmental assessment of the draft LAP, as proposed to be amended, is reviewed to demonstrably assess the potential for significant effects arising from the proposed zoning of land for development within flood risk zones A and B.

2.0 Material Alteration no.46

Material Alteration no.46 imposes a single-storey height limit on development within the extended boundary to the village of Lios Póil. This would, however, be contrary to Specific Planning Policy Requirement (SPPR) 1 of the *Urban Development and Building Height Guidelines* (DHP&LG, 2018), which provides that statutory plans do not include blanket numerical limitations on building height. A restriction of this nature could also unreasonably work against achieving compact development within a serviced settlement through well-designed development that is appropriate to the village setting.

The future development of this site should also ensure permeability for pedestrians and cyclists between the N86 to the north and the local road to the south which forms part of the Dingle Way.

MA Observation 3 - Material Amendment 46

The planning authority is advised that Material Amendment no.46 be amended to:

- (i) omit the blanket single-storey building height limit to ensure consistency with the requirements of SPPR 1 of the Urban Development and Building Height Guidelines (DHP&LG, 2018); and
- (ii) to require that the future development of the lands provides for permeability for pedestrians and cyclists between the N86 to the north and the local road to the south.

In summary

The Office requests that your authority addresses the recommendations outlined above, which are made in the context of the provisions of section 31AO(3)(a) of the Act, in order to ensure that the LAP is consistent with relevant national and regional policy obligations, guidelines and legislative requirements.

The report of the chief executive of your authority prepared for the elected members under Section 20 of the Act must summarise these recommendations and the manner in which they should be addressed.

Your authority is required to notify this Office within **five working days** of the making of the local area plan and send a copy of the written statement and maps as made, in accordance with section 31AO(5) of the Act. **Please note that this statutory timeline differs from the requirement for other consultees and must be complied with.**

Where the planning authority decides not to comply with a recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with any recommendations made by the Office, then the chief executive shall inform the Office and give reasons for the decision of the planning authority.

Such notice requirements enable the Office to consider the matters further as regards the making of any recommendations to the Minister in relation to the provisions of sections 31AO and 31AP of the Act.

Please feel free to contact the staff of the Office in the context of your authority's responses to the above, which we would be happy to facilitate. Contact can be initiated through plans@opr.ie.

Is mise le meas,

Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations