

16th June 2022

Senior Planner,
Planning Policy Unit,
Kerry County Council,
Rathass,
Tralee,
Co. Kerry,
V92 H7BT.

**Re: Material Alterations to Draft Kerry County Development Plan 2022-
2028**

A chara,

Thank you for your authority's work in preparing the Material Alterations to the draft Kerry County Development Plan 2022-2028 (MAs to the draft Plan).

The Office notes, however, that a section 12(5)(aa) notice was not issued to the Office as required under the provisions of the Act. The purpose of the notice is to set out the reasons of the planning authority in not accepting the recommendation(s) of the Office to enable an objective assessment of the material alterations.

In view of the current stage of the development plan-making process, the Office would like to alert the planning authority of the requirements of section 31AM(6) under which a notice must be issued to the Office within 5 working days of the making of a development plan. The Office is happy to clarify any queries the planning authority may have in respect of this process.

As your authority will be aware, one of the key functions of the Office of the Planning Regulator (the Office) is the strategic evaluation and assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. The Office has evaluated and assessed the material alterations to the draft Plan under the provisions of sections 31AM(1) and (2) of the *Planning and Development Act*,

2000, as amended, (the Act) and within the context of the Office's earlier recommendations and observations.

As outlined in the submission of the Office to the draft Plan, the Office considered the draft Plan to be generally consistent with policies in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Southern Regional Assembly area, and recommended changes to enhance its alignment with national and regional policies in the aforementioned, and for consistency with *The Wind Energy Development Guidelines (2006)*, the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*, and *The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)*.

The planning authority is advised that section 12(10) of the Act provides the members of the planning authority with scope to make a further modification to a material alteration subject to the limitations set out in subsection 10(c) parts (i) and (ii).

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. As such, the planning authority is required to implement or address recommendation(s) made by the Office in order to ensure consistency with the relevant policy and legislative provisions.

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 also 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.

Overview

The Office acknowledges the significant work undertaken by Kerry County Council in preparing the material alterations to the draft Plan and in responding to the many issues raised by the Office through the recommendations and observations made in the Office's submission to the draft Plan.

The presentation of the material alterations is clear and coherent to allow all parties understand and accurately interpret the proposed alterations to the Plan. The Office would like to commend the planning authority in this regard.

The Office commends the Council in amending the Rural Housing policy to provide for an evidenced based approach to Rural Area Types in accordance with National Policy Objective 19.

The Office welcomes the inclusion of a number of material amendments that support and strengthen the sustainable transport policies of the Plan, including the promotion of sustainable modes of transport (MA 14.1), the incorporation of 10-minute town concepts (MA 14.7) and the promotion of car sharing / car-pooling within the county (MA 14.8).

The Office also acknowledges the efforts made by the planning authority in respect of the objective to prepare Local Transport Plans (MA 14.9) and the commitment to finalise these plans within 2 years of the adoption of the Plan (MA 14.16). The Office has, however, identified conflicts in respect of MA 14.20 and 14.21 in relation to the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)*, which are noted and are further addressed as part of Recommendation 1.

The Office remains concerned, however, regarding the proposed approach to wind energy in the context of achieving the national targets for renewable energy under the *Climate Action Plan 2021*, and consistency with national planning policy including section 28 Guidelines issued by the Minister. The planning authority will also be aware of its obligations under section 15(1) of the *Climate Action and Low Carbon Act (2015)* to perform its functions in a manner consistent with the *Climate Action Plan 2021* and of the requirement to support national objectives in the recently



published *National Energy Security Framework (2022)* in respect of energy security issues.

County Kerry has demonstrated a strong commitment to the delivery of renewable energy and it is crucial at this point in time that this commitment is continued in light of the very real challenges which government policy seeks to address. This matter is addressed through a further recommendation below (MA Recommendation 2).

It is also noted that Recommendations 1 and 2 of the Office's submission to the draft Plan in relation to the settlement hierarchy and core strategy have not been fully addressed and are proposed to be reviewed in the context of LAPs. In this context, the preparation of new LAPs or the amendment of existing LAPs to align with the development plan, as required under sections 18(4)(b) and 12(2)(b) of the Act, will present a significant challenge to the planning authority.

Having regard to the large number of proposed material amendments, the Office has identified relatively few concerns of significance that warrant additional recommendations at this stage of the plan-making process. It is within this context the submission below sets out 4 recommendations and 1 observation under the following 10 themes:

Key theme	MA Recommendation	MA Observation
Core strategy and settlement strategy	-	-
Sustainable Development	-	-
Housing Strategy and relevant policies	-	-
Rural Housing and Regeneration	-	-
Economic Development and Employment	-	-
Sustainable Transport and Accessibility	MA Recommendation 1	-
Climate Action and Renewable Energy	MA Recommendation 2	-
Flood Risk Management	-	MA Observation 1



Implementation and Monitoring	-	-
Environment, Heritage and Amenities	MA Recommendation 3	
	MA Recommendation 4	

1. Core Strategy and Settlement Strategy

1.1 Settlement Hierarchy and distribution of growth

The Office notes that, contrary to the recommendations of the Chief Executive, no material amendments have been made to the settlement hierarchy or to the population and housing growth for settlements in the core strategy in response to Recommendation 1 of the Office’s submission to the draft Plan.

The core strategy therefore remains inconsistent with the policy objectives of the NPF and RSES, namely: RPO 3 to determine appropriate growth rates in accordance with the guiding principles under section 3.3 of RSES; NPO 9 and RPO 11 to allow for planned growth of in excess of 30% to 2040 (other than cities and regional growth centres) only for key towns; and NPO 33 to prioritise the provision of new homes at locations that can support sustainable development of appropriate scale.

The Office therefore considers that the draft Plan, as proposed to be amended, does not comply with Recommendation 1 of the Office’s submission to the draft Plan in terms of the distribution of future population and housing across the settlement hierarchy.

1.2 Core Strategy and zoning for residential use

The Office welcomes Material Amendment (MA) 3.9, which inserts two additional columns to the core strategy table, on ‘existing zoned land’ and ‘zoned land required’, in response to part (i) of Recommendation 2 of the Office’s submission to the draft Plan. The Office notes that the details of ‘zoned land required’ relate only to

those settlements proposed to be zoned under the development plan; Tralee, Killarney and Listowel.

Although it would be preferable to determine land use zoning requirements for all settlements through the core strategy of the development plan, in line with section 6.2.1 of the *Development Plan, Guidelines for Planning Authorities - Draft for Consultation (2021)* (draft Guidelines (2021)), the Office acknowledges the intention of the planning authority to zone land for settlements throughout the county under future local area plans, as allowed under section 19(2) of the Act.

The Office notes the amendment of settlement capacity audits for Tralee, Killarney and Listowel under MA Volume 2, SCA 1, to include assumed residential density and estimated residential unit yield, in response to part (ii) of Recommendation 2. However, the Settlement Capacity Audit (SCA) is not consistent with the approach recommended under the *Development Plan Guidelines for Planning Authorities - Draft for Consultation (2021)* (appendix A), as the SCA tables consider only residential zoned land, not lands zoned for a mixture of residential and other uses, notwithstanding reference to potential housing yield for brownfield / infill sites (M1 / M2 zoned land) in the body of the text. There are significant mixed use / opportunity sites in the settlements concerned, the development of which is consistent with national and regional policy objectives for compact growth and urban regeneration. The SCA also excludes housing yield of tier 2 lands (NPO 72a-c refer). Finally, the residential densities applied in the SCA table are not consistent with the recommended densities under the *Guidelines for Planning Authorities on Sustainable Development in Urban Areas: Cities, Towns and Villages* (2009).

The Office welcomes MA 3.12, which commits the planning authority to prepare a settlement capacity audit (SCA) for each regional and district town to inform the zoned land requirements in the local area plans. It will be important for the SCA approach to be implemented in accordance with the aforementioned guidelines, including the application of appropriate densities.

Having regard to the housing and population targets of the core strategy, it would appear that the 'existing zoned land' for the regional and district towns is not

currently aligned with the area that would be anticipated based on the core strategy and reasonable assumptions on residential density, compact growth and regeneration. The preparation of new LAPs or the amendment of existing LAPs to align with the development plan as made, having regard to the provisions of section 18(4)(b) and 12(2)(b) of the Act, including time limits, will therefore present a significant challenge for the planning authority.

2. Sustainable Development

2.1 Development approach for settlements

Recommendation 3 of the Office's submission on the draft Plan relates to the requirement to amend LAPs under section 18(4)(b) and 19(2B) of the Act to align with the development plan, to provide a timescale for the timely review of all LAPs and requests that maps be prepared for Key, Regional and District Towns and Villages.

The Office welcomes MA Tralee 17 and MA Killarney 11 to include the existing environs zoning in the Municipal District LAPs in the Plan in accordance with part (i) of the recommendation. It is noted that the planning authority has not made amendments in relation to part (ii) and (iii) of the recommendation.

It is noted that MA 1.5 has been included to state that the LAPs for Tralee, Killarney and Listowel will be reviewed within 12 months of the adoption of the Plan and all remaining LAPs will be reviewed by the end of Q1 2024. It is noted that the South Kerry Municipal District LAP, which is to replace the Functional Area LAPs for settlements including the regional towns of Kenmare and Killorglin, is yet to be prepared. In view of the apparent expiration of the FALAPs in 2016, the South Kerry LAPs should be expedited.

2.2 Compact Growth & Regeneration

The Office welcomes the clarity and further information detailed in the Chief Executive's Report (CE Report) in relation to the preparation of Masterplans which will facilitate the implementation of compact growth and regeneration policies of the plan.



2.5 Standards and Guidelines

Appropriately tailored car-parking constraints are a key tool for the local authority in managing traffic demand (from private cars) and facilitating or supporting active and sustainable transport modes and therefore in implementing objectives for sustainable settlement and transport strategies under section 10(2)(n). Such restrictions therefore will play a key role in contributing to Ireland's climate change targets. The Office therefore regrets the decision of the planning authority not to amend the draft Plan to set the proposed residential and commercial car parking standards as maximum standards, as was advised in Observation 2 of the Office's submission on the draft Plan.

3. Housing Strategy and relevant policies

3.1 Traveller accommodation

The Office welcomes MA LUZ 1 which inserts Traveller Accommodation as a specific land use category in the zoning matrix and identifies appropriate land use zones in which it is permitted in principle, open for consideration and not normally permitted. In this regard, the Office positively notes that Traveller accommodation is permitted in principle in the residential (R) and built up areas (M4).

Although the planning authority has decided not to indicate specific areas for use as Traveller accommodation in accordance with section 10(2)(i), the approach under the proposed amendment is considered a reasonable alternative.

4. Rural Housing and Regeneration

4.1 Rural housing policy

The Office welcomes the proposed amendments to the Rural Housing Policy in response to Recommendation 5 of the Office's submission to the draft Plan.

In particular, the Office is satisfied that MA 5.11, which redefines the rural areas '*rural areas under significant urban influence*' and '*rural areas under urban influence*' in Map 5.1 - Rural Area Types, and which is based on the evidence set out in Appendix 8 of the draft Plan. The Office considers this consistent with the requirement for an

evidence-based approach under the *Sustainable Rural Housing Guidelines for Planning Authorities* (2005) (SRH guidelines).

In addition, the Office welcomes MA 5.9 and MA 5.10, which amend objectives KCDP 5-12 and KCDP 5-13 respectively, in accordance with Recommendation 5 of the Office's submission and which is consistent with the criteria of NPO 19.

The Office has some concern, however, with the proposal to amend the criteria relating to small-scale cluster development under section 5.4 of the draft Plan, which would limit the occupancy of such dwellings to persons who have lived at least seven years in the local rural area. The SRH guidelines require planning authorities to aim to encourage and promote development in smaller rural towns and villages, including through the provision of serviced sites. The 'new homes in small towns and villages' programme is supported by NPO 18b and RPO 26 to create 'build your own home' opportunities within the existing footprint of rural settlement. As such development has the potential to provide an alternative to one-off housing in the open countryside, the Office would question the appropriateness of this restriction.

5. Economic Development and Employment

5.1 Employment Zoned Land

The Office notes that no evidence-based justification of the overall quantity and spatial location of employment lands zoned under the draft Plan has been provided by the planning authority, contrary to Observation 4 of the Office's submission to the draft Plan.

However, the Office commends the planning authority for introducing specific, appropriate criteria for the designation of employment zonings under section 9.6.1 of the draft Plan. This has the potential to provide a rational, evidence-based approach to employment zoning under the LAPs and may be considered best practice.

6. Sustainable Transport and Accessibility

The Office welcomes the inclusion of material amendments which support and strengthen the sustainable transport policies of the plan, including in particular the

promotion of sustainable modes of transport (MA 14.1), the incorporation of 10-minute town concepts (MA 14.7) and the promotion of car sharing / car-pooling within the county (MA No. 14.8).

The Office welcomes the material amendments to objective KCDP 14-10 to facilitate and support the preparation of Local Transport Plans (LTPs), under MA 14.9, and to objective KCDP 14-19 to finalise these plans within 2 years of the adoption of the Plan, in consultation with the NTA, under MA 14.16. Consultation with TII would also be of benefit to the preparation of LTPs.

The Office notes the proposed amendment (MA 14.5) of objective KCDP 14-5, which responds to Observation 6 of the Office's submission to the draft Plan, to provide that modal share targets will be informed by the preparation of local transport plans. Although this is positive, the inclusion of county modal share targets would enable the planning authority to monitor the implementation of the Plan in accordance with the SMART approach set out in the *Development Plans, Guidelines for Planning Authorities – Draft for Consultation (2021)* and would provide a clear focus in the preparation of the future LTPs.

The Office is particularly concerned, however, with the proposal to insert two new objectives to facilitate access onto the strategic national road network: MA 14.20 seeks to '*Support new planning applications which require access onto National Primary/Secondary Roads where there are existing entrances*'; and MA 14.21 seeks to '*Support all applications on local private roads, with sufficient width, over 250m in length, with 3 or more residences, be treated as any other application on a public road, entering from a national primary or secondary road.*'

These amendments are inconsistent with the policy provisions under section 2.5 of the section 28 Guidelines *Spatial Planning and National Roads Guidelines for Planning Authority (2012)* '*to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 60km apply*'.

In relation to MA 14.21, the Office does not accept that it is reasonable to consider that the intensification of an access serving a cluster of residential developments falls

outside the restrictions under section 2.5, the purpose of which is to maintain the efficiency, capacity and safety of the strategic national road network.

The subject amendments would therefore be contrary to Ministerial policy under the guidelines and to government policy under National Strategic Outcome 2 of the NPF to maintain the strategic capacity and safety of the national road network.

MA Recommendation 1 - Access to national roads

Having regard to the requirements under section 2.5 of the section 28 Guidelines *Spatial Planning and National Roads Guidelines for Planning Authority* (2012) and to NSO 2 of the National Planning Framework, the planning authority is required to make the Plan without the following material amendments:

- MA 14.20
- MA 14.21

7. Climate Action and Renewable Energy

7.1 Renewable Energy and Climate Action

The Office welcomes the amendment of Chapter 12 Energy of the draft Plan to include a new objective to facilitate and promote alternative forms of energy (MA 12.10) and to seek to prepare a renewable energy strategy for the county (MA 12.11).

The Office also welcomes the proposed amendment to section 12.5.1 of the draft Plan by MA 12.6 to include estimated production (in Mega Watts (MW)) for of a range of renewable energy sources. It is noted, however, that no targets have been included for wind energy production contrary to the requirements of the Specific Planning Policy Requirement (SPPR) of the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* (2017).

Further, the Office notes that the planning authority has not re-evaluated the 'Areas for Further Assessment' (AFA) in its 'Wind Energy Methodology' (WEM), as required

by part (ii)(a) of Recommendation 7 of the Office's submission to the draft Plan, to provide a total area where wind energy is permitted in principle commensurate with the total area of the county. It is the understanding of the Office that the planning authority revised the WEM subsequent to the public consultation period on the draft Plan, which revisions included the omission of 1km exclusion criterion around settlements in the sieve analysis mapping and reconsidered the AFAs on the basis of 27 rather than 25 areas. The revised document does not appear to have been published as part of the material amendments and therefore it is not evident that part (ii)(b) of the recommendation has been complied with. Clarification is required in this respect.

Rather, under MA 12.9, the planning authority has decided to omit those areas identified as 'open to consideration' (OTC) for wind energy in the draft Plan and to insert two new smaller areas as OTC in the south of the county, which areas had been almost entirely ruled out through the sieve analysis carried out by the planning authority, prior to the planning authority's further assessment of the AFAs.

This amendment further undermines the planning authority's ability to contribute to national targets for renewable energy under the *Climate Action Plan 2021*, as required by the SPPR, and to meet its obligations under section 15(1) of the *Climate Action and Low Carbon Act (2015)*, as amended, to perform its functions in a manner consistent with the *Climate Action Plan 2021*. The government's requirement that 'the local planning policy framework fully supports the national objectives' is also reiterated in the *National Energy Security Framework (2022)*, which responds to the recently emerging energy security issues.

The subject material amendment is therefore contrary to the implementation of the evidence-based approach recommended in the *Wind Energy Development Guidelines for Planning Authorities (2006)* and is inconsistent with the SPPR of the interim guidelines. In this regard, the planning authority will be aware of its obligations in relation to the implementation of SPPR under sections 28(1)(c) and 12(18) of the Act.

The Office notes that the planning authority's SEA Environmental Report considered that the removal of the existing OTC will have a negative impact on the county's ability to comply with targets identified in Ireland's Climate Action Plan regarding RE production and reducing GHG emissions. The Environmental Report also considered that significant effects could not be excluded from the inclusion of the two new areas for OTC as these areas have not been previously assessed as part of the SEA.

In addition, the planning authority's Nature Impact Report concluded that potential direct and/or indirect adverse impacts on the conservation objective of European sites could not be ruled out and recommended that the lands proposed as OTC in MA 12.9 either revert back to the objectives of the draft Plan or additional specific protective policies be included in the Plan in respect of these two areas. The recommendations of the Appropriate Assessment has not been implemented in the material amendments. In this regards, the planning authority as the competent authority will be aware of its obligations under the Habitats Directive.

MA Recommendation 2 - Wind energy development

Having regard to NPO 55 and the provisions of the *Wind Energy Development Guidelines for Planning Authorities* (2006), which recommend the implementation of the evidence-based approach to the determination of areas suitable to accommodate wind energy development through the sieve analysis approach, as was implemented in the *Wind Energy Methodology* (excluding the Areas for Further Assessment) carried out by the planning authority, and having regard to the conclusions of the planning authority's Strategic Environmental Assessment Environmental Report and its Natura Impact Report, the planning authority is required to make the Plan without MA 12.9.

8. Flood Risk Management

The Office acknowledges the efforts made by the planning authority to incorporate the key flooding requirements and mitigation measures identified in the SFRA (as revised). In this regard the Office welcomes the extensive amendments included

throughout the draft Plan which are anticipated to mitigate flood risk and, in particular, proposed amendments MA Tralee 16, MA Killarney 10 and MA Listowel 10, which amend the flood maps to include Flood Zones A and B.

The Office notes, in response to part (iii) of Recommendation 8 of the Office's submission to the draft Plan, the planning authority's proposals to include specific zoning map objectives which address flood risk management in relation to:

- Sites C5.2, C5.4 and R1.6.1 in Tralee under MA TR114, MA TR115 and MA TR118), in addition to C5.5I, M1 and C2.1.1/R1.6.3/S1.1 under MA TR116, MA TR117 and TR118; and
- Sites C5.1, R1.6.1, R1.6.2/R4.6.1/R4.6.2 in Killarney under MA KA84, MA KA85 and MA86, in addition to CR.2 under MA KA87.

The Office welcomes this approach. The Office also notes specific objectives have been proposed for sites O.1.1, C5.1, C2.1.1 and C2.1.2 in Listowel under MA LIS-98, MA LIS-99, LIS-100 and LIS-101, which correspond with the sites of concern raised by the Office in its recommendation ((Town Centre (M2), Built Up Area (M4), and Existing Residential (R2)).

Although the Office welcomes the proposals to rezone R1 residential lands in Tralee located within Flood Zone A for less vulnerable P1 Agriculture lands under MA Tralee 15, highly vulnerable and vulnerable uses are open for consideration within these lands. *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) (Flood Risk guidelines) provides that lands within Flood Risk Zone A should not be zoned for highly vulnerable or vulnerable uses, and lands within Flood Risk Zone B should not be zoned for highly vulnerable uses without passing the plan making Justification Test. The Office considers that this may be appropriately resolved through a minor modification, having regard to the wording of MA Tralee 13 (TR118), MA Killarney 6 (KA85) and MA Killarney 7 (KA86), to include a general objective not to permit highly vulnerable development within Flood Zone A and B and not to permit less vulnerable development within Flood Zone A.

MA Observation 1 – Flood risk management

Having regard to the requirements of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009), as amended, and to NPO 57, the planning authority is advised to make the plan with a minor modification to include an overall policy objective to ensure that highly vulnerable development is not permitted in areas identified in Flood Zone A and B and that less vulnerable development is not permitted in areas identified in Flood Zone A.

The Office notes that plan making justification tests have not been carried out in respect of lands at risk of flooding, proposed to be zoned within the existing built up area for vulnerable uses, contrary to part (i) of Recommendation 8.

The Office welcomes MA 11.11 amending section 11.5.2 to include specific guidance for development in existing built up areas, including with reference to residual risk pending construction of flood mitigation infrastructure. However, having regard to the provisions the Flood Risk guidelines, the final Plan should acknowledge that residual flood risk will remain on completion of implementation of future flood mitigation infrastructure.

In relation to restricting minor development and supporting the requirement for a site specific flood risk assessment in existing built up areas, MA Tralee 14 and MA Killarney 8 include new objectives for the development within existing built up areas, in response to part (iii) of Recommendation 8 of the Office's submission to the draft Plan. The Office would welcome the inclusion of appropriate reference to the requirement for Site Specific Flood Risk Assessment in respect of such sites by way of minor modification.

9. Implementation and Monitoring

The Office acknowledges the inclusion of new objectives under MA 4.4 and MA 1.4, which aim to improve the implementation, and monitoring objectives. However, having regard to the *Development Plans, Guidelines for Planning Authorities - Draft for Consultation* (2021), implementation and the related monitoring and reporting

tasks are aspects of the plan making process that are required to be structured and durable, and as such objectives should be framed in a manner where they can be implemented, monitored and evaluated.

In this respect MA 1.4 only commits to the statutory requirement under the Act in terms of monitoring and implementation and fails to adequately address the SMART approach to facilitate monitoring over the lifetime of the plan. The Office would encourage the planning authority to consider the inclusion of more focused monitoring.

10. Environment, Heritage and Amenities

The Office notes MA 11.14, which seeks to include a new objective to *'facilitate and support dredging and /or pumping where appropriate to protect rivers and waterways'*. No mandatory objectives refer to the subject amendment under section 10(2) of the Act, and no discretionary objectives refer under the First Schedule of the Act.

The proposed amendment was subject of screening for appropriate assessment and carried forward for Appropriate Assessment. The planning authority's Natural Impact Report concluded that the proposed amendment could potentially adversely affect water dependent qualifying interest habitats and species and recommended that the wording be modified as follows (additional text indicated in red):

*'Facilitate and support dredging and/or pumping, **subject to environmental assessment and where appropriate**, to protect rivers and waterways.'*

This recommendation was not included in the material amendment. In this regard the planning authority will be aware of its obligations under the Habitats Directive.

The planning authority's SEA Environmental Report also advises that this objective is likely to have significant effects specifically in relation to biodiversity, water and archaeology.

The River Basin Management Plan 2018-2021 notes that physical alterations to surface waters — such as dredging, river-bank works and channelisation — can also

damage aquatic ecosystems and notes the range of environmental and planning regulations introduced since 2010 which provide additional protection of waters from damaging physical alterations. There is evidence presented, however, to demonstrate that The *River Basin Management Plan 2018-2021* (RBMP) objectives have been fully considered consistent with NPO 57 to enhance water quality and resource management by, among others, ensuring that RBMP objectives are fully considered throughout the physical planning process.

The planning authority's attention to also drawn to the potential for conflict with the environmental objectives of the EU Water Framework Directive (2000/60/EC), which underpin the RBMP, that is:

- 1 *to prevent the deterioration of water bodies and to protect, enhance and restore them with the aim of achieving at least good status; and*
- 2 *to achieve compliance with the requirements for designated protected areas¹*

As such, the Office considers that the objective inserted as MA 11.14 is not consistent with NPO 57; and having regard to the conclusions of the SEA Report and NIR, with NPO 59 to enhance the conservation status and improve the management of protected areas and species by, among others, implementing relevant EU Directives, and NPO 60 to conserve and enhance the rich qualities of Ireland's natural heritage.

The subject material amendment therefore conflicts with the requirement under section 10(1D) of the Act, which requires that the development objectives in the development plan are consistent with the conservation and protection of the environment.

¹ River Basin Management Plan 2018-2021

MA Recommendation 3 - Dredging

Having regard to section 10(1D), section 10(2), section 12(11) and the First Schedule of the *Planning and Development Act 2000*, as amended, and to NPO 57, NPO 59 and NPO 60, the planning authority is required to remove the new objective inserted by MA 11.14.

The Office also notes MA 2.16, which seeks *'to support the continued cutting and distribution of turf in order for people to heat their homes'*.

The amendment was subject of screening for appropriate assessment and carried forward for Appropriate Assessment. The planning authority's Natural Impact Report concluded that the amendment could potentially facilitate the cutting of qualifying interest peatland habitats, although it acknowledged objectives and policies in support of peatland protection and restoration in the plan. Accordingly, it recommended the amendment be modified as follows (additional text indicated in red):

Support the continued cutting and distribution of turf, from appropriate locations outside of designated nature conservation sites, in order for people to heat their homes.

The material amendment was not modified as recommended by the NIR.

The planning authority's SEA Environmental Report considered that this objective is likely to have significant effects specifically in relation to biodiversity, air and climate policy. Further to the above amendment recommended in the Natural Impact Report and the existing environmental mitigation included in the policies and objectives of the plan, the SEA considered that any likely significant effect from this MA can be satisfactorily mitigated.

The proposed material amendment therefore conflicts with NPO 57 which it to enhance water quality and resource management by, among others, ensuring that RBMP objectives are fully considered throughout the physical planning process; with

NPO 59 which is to enhance the conservation status and improve the management of protected areas and protected species by, among others, implementing relevant EU Directives to protect Ireland's environment and wildlife; and with NPO 60 to conserve and enhance the rich qualities of Ireland's natural heritage.

The subject material amendment therefore conflicts with the requirement under section 10(1D) of the Act, which requires that that the development objectives in the development plan are consistent with the conservation and protection of the environment.

MA Recommendation 4 - Turf cutting

Having regard to section 10(1D), section 10(2), section 12(11) and the First Schedule of the *Planning and Development Act 2000*, as amended, and to NPO 57, NPO 59 and NPO 60, the planning authority is required to remove the new objective inserted by MA 11.14.

Summary

The Office requests that the planning authority address the recommendations and observations outlined above. As you are aware, under section 12 of the Act the report of the chief executive prepared for the elected members must summarise these recommendations and the manner in which they will be addressed.

At the end of the process, the planning authority is required to notify this Office within five working days of the decision of the planning authority in relation to the Material Alterations to the draft Plan. Where the planning authority decides not to comply with the recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with the recommendations of the Office, the chief executive must inform the Office accordingly and state the reasons for the decision of the planning authority.

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.



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Is mise le meas,

Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations
