



Oifig an  
Rialaitheora Pleanála  
Office of the  
Planning Regulator

6<sup>th</sup> June 2025

James Browne TD,  
Minister for Housing, Local Government and Heritage,  
Department of Housing, Local Government and Heritage,  
Custom House,  
Dublin 1,  
D01 W6X0.

**BY HAND AND BY EMAIL**

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act  
2000 (as amended) – Variation No. 2 to the Wicklow County Development Plan  
2022-2028**

A chara,

1. I am writing to you in relation to the recent adoption of Variation No. 2 (the Variation) to the Wicklow County Development Plan 2022-2028 (the County Development Plan) by the elected members of Wicklow County Council (the Planning Authority).
2. In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator (the Office) pursuant to section 31AM(8) of the Planning and Development Act 2000, as amended (the Act) to issue a Notice to you on the basis that, having considered the Variation, the Office is of the opinion that:
  - a) the Variation has not been made in a manner consistent with recommendations of the Office, dated 31<sup>st</sup> March 2025, which required specific changes to the Variation to ensure consistency with NPO 57 of the National Planning Framework (2018) (NPF) and RPO 7.12 of the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly (RSES) to avoid inappropriate development in areas at risk of

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flooding in accordance with the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines).

Specifically, the Variation includes material alterations to zone land for residential and employment development in areas at risk of flooding;

- b) the Variation has not been made in a manner consistent with recommendations of the Office, dated 31<sup>st</sup> March 2025, which required specific changes to the Variation to ensure consistency with NPO 41a to manage Ireland's coastal resource to sustain its environmental quality, NPO 59 to enhance the conservation status and management of protected areas and species, and RPO 7.16 of the RSES to ensure alignment between the core objectives of the EU Birds and Habitats Directives and local authority development plans.

Specifically, the Variation includes material alterations to zone land for residential and employment development in areas of environmental and biodiversity sensitivity, including land within the riparian buffer of a watercourse and/or adjacent to The Murrough SPA and The Murrough Wetlands SAC and the coastal resource at Broad Lough;

- c) the Variation of the County Development Plan has not been made in a manner consistent with the recommendations of the Office, and
- d) the decision of the Planning Authority results in a variation to the development plan in a manner that fails to set out an overall strategy for the proper planning and sustainable development of the area concerned; and
- e) as a consequence, the use by you of your function to issue a direction under section 31 of the Act would be merited.

- 3. The reasons for the opinion of the Office are set out in further detail in this letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

- 4. This letter is laid out under the following headings:

- 1. [General Information](#)
- 2. [Table of Recommendations](#)
- 3. [Assessment and Evaluation of the Office](#)

- 3.1 [Relevant recommendations at MA stage](#)
  - 3.1.1 [MA Recommendation 2 – Flood Risk Management](#)
  - 3.1.2 [MA Recommendation 3 – Environmental Protection](#)
  - 3.1.3 [Revised National Planning Framework](#)
- 3.2 [Consideration of the Outstanding Matters](#)
  - 3.2.1 [MA 20B Lands at Glenealy Road, Rathnew](#)
  - 3.2.2 [MA 38 Lands at Charvey Court, Rathnew](#)
  - 3.2.3 [MA 41 Lands at the Murrough, Wicklow Town](#)
- 4. [Opinion of the Office and Reasons](#)
- 5. [Recommendation to the Minister](#)

## **1. General Information**

- 5. The Variation was brought forward in conjunction with the Wicklow Town-Rathnew Local Area Plan 2025-2031 (the Local Area Plan). The purpose of the Variation is to ensure consistency between the Wicklow Town-Rathnew Local Area Plan 2025-2031 with the County Development Plan.
- 6. As the Minister will be aware, the statutory provisions in respect of the role of the Office relating to development plans (which also apply to variations of the development plans) under section 31AM of the Act, differs from the provisions relating to local area plans under section 31AO. As a consequence, the matters raised in this notice letter differ from those set out in the Notice to you pursuant to section 31AO(7) of the Act, which relates to the Local Area Plan.
- 7. The Variation is described as:

*PROPOSED VARIATION NO. 2 Integrating the land use zoning map and key development objectives from the Wicklow Town – Rathnew Local Area Plan (LAP), which is being prepared separately but alongside the Proposed Variation, as well as other changes consequent into the County Development Plan.*

- 8. The public consultation on the draft Variation ran from 9<sup>th</sup> October 2024 to 20<sup>th</sup> November 2024. The Office made six recommendations in its submission on 20<sup>th</sup> November 2024.

9. The public consultation on the material alterations ran from 3<sup>rd</sup> March 2025 to 31<sup>st</sup> March 2025. The Office made five recommendations in its submission on 31<sup>st</sup> March 2025.
10. The Variation was adopted by the Planning Authority on 12<sup>th</sup> May 2025.
11. The Planning Authority sent a notice letter under section 31AM(6) of the Act (31AM(6) notice letter) to the Office on 15<sup>th</sup> May 2025 advising of resolving to vary the County Development Plan. The accompanying report sets out the Chief Executive's response and recommendation in respect of all of the recommendations and observations raised in the Office's submissions at draft and material alterations stages, together with the elected members' decision, and the reasons for that decision.
12. The Office has assessed the adopted Variation in light of the recommendations at draft stage and material alterations stage and has reviewed the Chief Executive's Reports (CE's Reports) and the 31AM(6) notice letter and accompanying report setting out the elected members' reasons.
13. The Office has concluded that, with the exception of residential zoned lands MA 20B (MA Recommendation 3), residential zoned lands MA 38 (MA Recommendation 2 and 3), and employment zoned lands MA 41 (MA Recommendation 2 and 3), the recommendations of the Office have been responded to and/or have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context such that a recommendation to the Minister is not merited in respect of those matters.

## 2. Table of Recommendations

OPR Recommendation	Subject	Planning Authority Response and OPR's Conclusion	S.31 Recommendation
<b>Draft Stage</b>			
Recommendation 1	Residential development strategy	Satisfactorily addressed	No

OPR Recommendation	Subject	Planning Authority Response and OPR's Conclusion	S.31 Recommendation
Recommendation 2	Transport and accessibility	Satisfactorily addressed	No
Recommendation 3	Flood risk management	Satisfactorily addressed	No
Recommendation 4	Economy and employment	Not implemented but Direction not merited	No
Recommendation 5	Rathnew Village centre	Satisfactorily addressed	No
Recommendation 6	The Murrough SPA and SAC	Satisfactorily addressed	No
<b>Material Alterations (MA) Stage</b>			
MA Recommendation 1	Residential Zoning Changes	MA 20B - Not Implemented	Yes (but under MA Recommendation 3)
		MA 27 - Not Implemented but Direction not merited	No
		MA 39 – Not Implemented but Direction not merited	No
		MA 40 - Not Implemented but Direction not merited	No
MA Recommendation 2	Flood risk management	MA 38 – Not implemented	Yes
		MA 41 – Not implemented	Yes
MA Recommendation 3	Environmental protection	MA 10 – Not implemented but Direction not merited	No
		MA 20B – Not implemented	Yes

OPR Recommendation	Subject	Planning Authority Response and OPR's Conclusion	S.31 Recommendation
		MA 38 - Not implemented	Yes
		MA 40 - Not implemented Direction not merited	No
		MA 41 – Not implemented	Yes
MA Recommendation 4	Economic development and employment	MA 31 - Not Implemented but Direction not merited	No
MA Recommendation 5	Integration of land use and sustainable transport	MA 22 - Not Implemented but Direction not merited	No
		MA 28 - Not Implemented but Direction not merited	No

### 3. Assessment and Evaluation of the Office

14. The outstanding matters are, therefore, confined to the following:

- MA 20B - Land zoned New Residential – Priority 2 (RN2) at Glenealy Road (MA Recommendation 3 Environmental Protection).
- MA 38 - Land zoned New Residential – Priority 1 (RN1) at Charvey Court (MA Recommendation 2 Flood Risk Management, and MA Recommendation 3 Environmental Protection).
- MA 41 - Land zoned Employment (E) at The Murrough (MA Recommendation 2 - Flood Risk Management, and MA Recommendation 3 - Environmental Protection).

### 3.1 Relevant Recommendations at MA Stage

15. The recommendations made by the Office to the Planning Authority that are now relevant to this recommendation to issue a direction under section 31 of the Act are as follows:

- MA Recommendation 2 Flood Risk Management (MA stage).
- MA Recommendation 3 Environmental Protection (MA stage).

#### 3.1.1 MA Recommendation 2 - Flood Risk Management

16. MA Recommendation 2 recommended that the Planning Authority avoid inappropriate land use zonings and development in areas at risk of flooding by omitting two new land use zonings which were proposed at material alteration stage.

#### MA Recommendation 2 - Flood Risk Management

Having regard to flood risk management, and in particular to:

- NPO 57 of the NPF and RPO 7.12 of the RSES to avoid inappropriate land use zonings and development in areas of risk of flooding in accordance with the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009); and
- the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

The Planning Authority is recommended to make Variation No. 2 to the Wicklow County Development Plan 2022-2028 without the following parts of material alteration 2, so that these zonings objectives revert to the draft Variation:

- (i) MA 38, Charvey Court; and
- (ii) MA 41, The Murrough.

### 3.1.2 MA Recommendation 3 – Environmental Protection

17. MA Recommendation 3 recommended that the Planning Authority make the Variation without five rezoning changes having regard to the protection of the environment (including MA 20B, MA 38 and MA 41).

#### MA Recommendation 3 – Environmental Protection

Having regard to the protection of the environment, including relating to European sites under the Birds and Habitats Directives, and in particular to:

- NPO 75 of the NPF and RPO 3.4 of the RSES to ensure all plans are subject to SEA and AA as appropriate;
- NPO 59 of the NPF to enhance the conservation status and management of protected areas and species;
- NPO 41 of the NPF to manage Ireland's coastal resource to sustain its character and environmental quality; and
- RPO 7.16 of the RSES to support the implementation of the Birds and Habitats Directives and ensure alignment with development plans.

The Planning Authority is recommended to make Variation No. 2 to the Wicklow County Development Plan 2022-2028 without the following parts of material alteration 2, so that these zonings objectives revert to the draft Variation:

- (i) MA 10, Charvey Lane;
- (ii) MA 20B, Glenealy Road;
- (iii) MA 38, Charvey Court;
- (iv) MA 40, Ballyguilemore; and
- (v) MA 41 The Murrough.

18. In relation to MA 10, the amendment proposed at material alteration stage did not change the zoning objective for the lands but rather created a new opportunity site (OP5) and identified pedestrian / cycle connections across the river to the south of the site, linking Charvey Lane to the R772. The 31AM(6)



notice letter sets out the reasons for making the Variation with MA 10 and two further text modifications, and these reasons are accepted by the Office.

19. In relation to MA 40, to amend the zoning of land measuring c.3ha at Ballyguile More from New Residential Priority 2 to New Residential Priority 1, the Office notes that planning permission for 47 residential units was recently granted by the Planning Authority by way of material contravention. The planning application (planning application reference [25/29](#)) was accompanied by a Natura Impact Statement which was assessed by the competent authority in accordance with the statutory requirements.
20. The Office does not, therefore, consider that a recommendation to the Minister is merited in relation to MA 10 and MA 40.
21. In relation to MA 20B, MA 38 and MA 41 the assessment in sections 3.2.1. 3.2.2 and 3.2.3 below, respectively.

### **3.1.3 Revised National Planning Framework**

22. Subsequent to the Office's submissions to the proposed Variation at draft and material alterations stage, the First Revision to the National Planning Framework (2025) (the Revised NPF) was approved by both Houses of the Oireachtas (April 2025). The Revised NPF included changes to the national planning objectives (NPOs) relevant to the recommendations of the Office. The Office is of the view, however, that these changes do not affect the substance of the recommendations, such that would affect the use by you of your function to issue a direction under section 31 of the Act.
23. The Revised NPF includes changes to former NPO 57 in relation to flood risk management. The relevant NPF includes NPO 78 which separates flood risk management from water quality and resource management, and includes a provision to take account of the potential impacts of climate changes on flooding and flood risk.
24. The NPOs in relation to biodiversity have been expanded in the Revised NPF to include NPO 85 in respect of the conservation, enhancement, mitigation and restoration of biodiversity (formerly NPO 59).

25. The NPO in respect of the environmental quality of Ireland's coastal resource (formerly NPO 41a) has been renumbered as NPO 52 but is otherwise unchanged.
26. These changes are summarised as:

Former NPF	Revised NPF	Revised NPF
<b>Flood Risk management</b>		
<b>NPO 57</b>	<b>NPO 78</b>	
<p><i>Enhance water quality and resource management by:</i></p> <ul style="list-style-type: none"> <li>• <i>Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.</i></li> <li>• <i>Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process.</i></li> <li>• <i>Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), non-porous surfacing and green roofs, to create safe places.</i></li> </ul>	<p><i>Promote sustainable development by ensuring flooding and flood risk management informs place-making by:</i></p> <ul style="list-style-type: none"> <li>• <i>Avoiding inappropriate development in areas at risk of flooding that do not pass the Justification Test, in accordance with the Guidelines on the Planning System and Flood Risk Management;</i></li> <li>• <i>Taking account of the potential impacts of climate change on flooding and flood risk, in line with national policy regarding climate adaptation.</i></li> </ul>	
<b>Environmental Assessment</b>		
<b>NPO 75</b>	<b>NPO 1</b>	
No text change	No text change	
<b>Environmental Quality of Ireland's Coastal Resource</b>		
<b>NPO 41a</b>	<b>NPO 52</b>	
No text change	No text change	

Biodiversity and Nature restoration		
NPO 59	NPO 87	NPO 85
<p><i>Enhance the conservation status and improve the management of protected areas and protected species by:</i></p> <ul style="list-style-type: none"> <li>• <i>Implementing relevant EU Directives to protect Ireland's environment and wildlife;</i></li> <li>• <i>Integrating policies and objectives for the protection and restoration of biodiversity in statutory development plans;</i></li> <li>• <i>Developing and utilising licensing and consent systems to facilitate sustainable activities within Natura 2000 sites;</i></li> <li>• <i>Continued research, survey programmes and monitoring of habitats and species.</i></li> </ul>	<p><i>Enhance the conservation status and improve the management of protected areas and protected species by:</i></p> <ul style="list-style-type: none"> <li>• <i>Implementing relevant EU Directives to protect Ireland's environment and wildlife and support the objectives of the National Biodiversity Action Plan;</i></li> <li>• <i>Developing and utilising licensing and consent systems to facilitate sustainable activities within Natura 2000 sites;</i></li> <li>• <i>Continued research, survey programmes and monitoring of habitats and species.</i></li> </ul>	<p><i>In line with the National Biodiversity Action Plan; the conservation, enhancement, mitigation and restoration of biodiversity is to be supported by:</i></p> <ul style="list-style-type: none"> <li>• <i>Integrating policies and objectives for the protection and restoration of biodiversity, including the principles of the mitigation hierarchy of - avoid, minimise, restore and offset - of potential biodiversity impacts, in statutory land use plan.</i></li> <li>• <i>Retention of existing habitats which are currently important for maintaining biodiversity (at local/regional/national/international levels), in the first instance, is preferable to replacement/restoration of habitats, in the interests of ensuring continuity of habitat provision and reduction of associated risks and costs.</i></li> </ul>

### 3.2 Consideration of the Outstanding Matters

27. The preparation of the Local Area Plan and the Variation were two separate processes with separate CE's Reports prepared at each stage of the process. As the purpose of the Variation was to integrate the land use zoning map from the Local Area Plan into the County Development Plan, and the documents were prepared and published alongside each other, most consultees responded to the Local Area Plan at the draft and material alteration stages, and their issues were addressed in the CE's Report on the draft plan stage dated January 2025, rather than the Variation. In recognition of this, the CE's Report on the material alterations stage dated April 2025 (CE's Report MA stage) to the Variation recommended:

*to proceed to make the Proposed Variation in accordance with all of the Proposed Material Alterations subject to any amendments / modifications that arises on foot of the Wicklow Town – Rathnew LAP 2025 adoption process.*

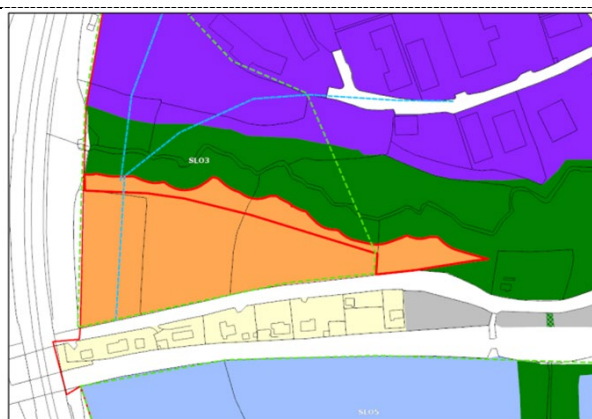
28. Although the Office made separate submissions to the Variation and the Local Area Plan at draft and material alteration stages, the CE's Report (MA stage) states that both of the Office's submissions raise similar issues and are addressed in the CE's Report (MA stage) for the draft Local Area Plan. It is further stated that the zoning map adopted into the County Development Plan by way of the Variation will be that map approved by the elected members through the Local Area Plan making process.
29. The statutory consultees' submissions, Chief Executive's responses and recommendations, elected members' reasons and the report accompanying the 31AM(6) notice letter all refer to the matters raised in terms of the Local Area Plan, rather than the Variation itself. As such, it is these documents that are referred to as part of the Office's assessment in this notice letter.
30. The three outstanding matters identified at paragraph 14 above are assessed in detail below. An overall map of the three material alterations (MA 20B, MA 38 and MA 41) is attached at Appendix 1.

### **3.2.1 MA 20B Lands at Glenealy Road, Rathnew**

<b>[1] Material Alteration 20B</b>	
<b>MA 20B</b> Rezone lands from Open Space (OS1) to New Residential – Priority 2 (RN2)	
<b>[2a] Approximate Site Area</b>	c. 0.67 ha
<b>[2b] CSO Boundary</b>	Outside CSO 2016 boundary Inside CSO 2022 boundary
<b>[3a] Zoning map extract of the land at draft stage</b>	<b>[3b] Zoning map extract of the land at material alterations stage</b>

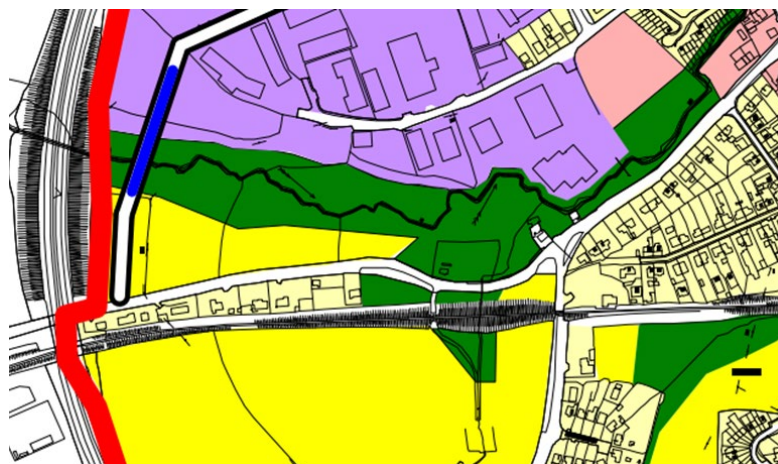


Zoned Open Space (OS1)



MA 20B – change zoning to New Residential – Priority 2 (RN2)

**[4a] Zoning map extract of the land from the Wicklow Town-Rathnew Development Plan 2013-2019**



The lands were zoned Passive Open Space (POS) and Residential (R2) in the previous Wicklow Town Rathnew Development Plan 2013-2019.

**[4b] Link to Aerial Imagery**

[Aerial photography of the site and its surrounds.](#)

**[5] Specific Site Constraints or Designations**

Hydrological link to European sites

**[6] Servicing Tier & Infrastructure Status**

Wastewater extension is needed from Rathnew village

Access from regional road, 80 kph speed limit, footpath and public lighting, no cycle lanes.

#### **[7] Chief Executive's Recommendation**

The [CE's Report on the draft Local Area Plan \(MA stage\)](#) states that this material alteration was proposed by the Elected Members at the County Council meeting of 10<sup>th</sup> February 2025.

The CE's Report on the draft Local Area Plan (MA stage) agrees with the Office's MA Recommendation 3 and recommends that the Local Area Plan be made without MA 20B for the following reason:

- the additional residential zoning proposed would conflict with the protection of the riverine environment and the protection of mature vegetation, notwithstanding the 25m set back from the river edge.

#### **[8] Prescribed Bodies**

##### **Department of Housing, Local Government and Heritage, Development Applications Unit (NPWS)**

The [NPWS submission on the material alterations to the draft Local Area Plan](#), dated 28<sup>th</sup> March 2025, considers that:

- the rezoning will reduce the buffer zone that already exists between the proposed area for residential use and the Rathnew Stream, which flows along the northern edge of the fields;
- this area is densely vegetated with native species, including willow, hawthorn, and blackthorn, which serve as an excellent riparian corridor along the Rathnew Stream. This habitat is likely wet woodland, and it would need to be assessed whether this habitat corresponds to any Annex I habitat, such as alluvial woodland;
- as the lands slope downwards towards the stream, any pollution run off from the lands, flows directly into the stream;
- as hedgerows and treelines can act as carbon sinks, the removal of some vegetation could increase the potential for pollution events that could affect the water quality of the Rathnew Stream, and the species that rely on it, such as otter, fish, birds, bats, and amphibians; and

- this watercourse is hydrologically connected to designated sites downstream in The Murrough, i.e. The Murrough SPA, The Murrough Wetlands SAC, and The Murrough pNHA.

The NPWS recommends that any change of zoning takes this into account and ensures protection of biodiversity, ecological corridors and protected species.

#### **[9] Elected Members' Reasons**

The elected members did not accept the Chief Executive's recommendation and made the Local Area Plan with MA 20B, for the following reasons:

- the site is currently zoned RN2 and it is proposed to keep this zoning and to include the small area 'new residential' zoning on lands that are outside of the 25m buffer from the stream to address and reflect the proper use of the lands; and
- the land is also subject to a 100m buffer from the M11 as is standard which is also a factor in the rezoning.

#### **[10] Environmental Assessments**

The Environmental Report (ER) prepared as part of the Strategic Environmental Assessment (SEA) by the Planning Authority also raises concerns in respect of the zoning objective under MA 20B, in particular that the zoning (RN2) would not provide the most evidence-based framework for development and has the potential to undermine sustainable development and proper planning - with potential for associated unnecessary adverse environmental effects on various environmental components, including:

- loss of an extent of soil function arising from the replacement of semi-natural land covers with artificial surfaces (residual effects would occur);
- occurrence of visual impacts (residual effects would occur);
- increased loadings on water bodies;
- conflict with efforts to maximise sustainable compact growth, sustainable mobility and a transition to a low carbon and climate resilient society (residual effects would occur); and

- adverse impacts upon carbon emission reduction targets in line with local, national and European environmental objectives (residual effects would occur).

The ER states that as previously identified by the Chief Executive, this additional residential zoning proposed would conflict with the protection of the riverine environment and the protection of mature vegetation, notwithstanding the 25m set back from the river edge.

### **AA Stage 1 Screening Report**

The Appropriate Assessment (AA) Stage 1 screening report prepared by the Planning Authority found that no Stage 2 assessment was required in relation to MA 20B as:

*Taking into account the measures that have been already integrated into the Draft Plan, the AA process for the Proposed Material Amendments has demonstrated that the implementation of Proposed Material Amendments will not result in any likely significant effect on any European site, apart from Proposed Material Amendment No. 41.*

### **[11] Evaluation and Assessment**

MA 20B represents an extension to lands zoned New Residential – Priority 2 (RN2) in the draft Local Area Plan, into an area of biodiversity and ecological sensitivity in the vicinity of the Rathnew Stream, which flows along the northern edge of the fields. The submission of the NPWS notes that this area is densely vegetated with native species, including willow, hawthorn, and blackthorn, which serve as an excellent riparian corridor along the Rathnew Stream. The submission states that this habitat is likely wet woodland, and it would need to be assessed whether this habitat corresponds to any Annex I habitat, such as alluvial woodland.

The biodiversity and ecological sensitivity of the northern part of the land bank which is the subject of MA 20B is clearly identified in both the CE's Report on the draft Local Area Plan (MA stage) and the NPWS submission. The SEA ER also states that the material alteration would conflict with the protection of the riverine environment and the protection of mature vegetation, notwithstanding the 25m set back from the river edge.

As set out above, the NPOs in relation to biodiversity have been expanded in the Revised NPF. NPO 59 of the former NPF required the integration of policies and objectives for the protection and restoration of biodiversity in statutory development plans. Referring to the



National Biodiversity Action Plan, NPO 85 of the Revised NPF requires that the conservation, enhancement, mitigation and restoration of biodiversity be supported by:

- integrating policies and objectives for the protection and restoration of biodiversity, including the principles of the mitigation hierarchy of - avoid, minimise, restore and offset - of potential biodiversity impacts, in statutory land use plans, and
- the retention of existing habitats which are currently important for maintaining biodiversity.

Having regard to the above, the Office is of the opinion that the zoning of land for residential development in an area that is densely vegetated with native species, and that serves as a high quality riparian corridor along the Rathnew Stream, is inconsistent with NPO 85 of the Revised NPF to retain existing habitats and integrate policies and objectives for the protection and restoration of biodiversity, including the first principle of the mitigation hierarchy to avoid potential biodiversity impacts, in statutory land use plans.

#### **[13] Consideration of Elected Members' Reasons**

In relation to residential (R2) zoning in the previous Wicklow Town Rathnew Development Plan 2013-2019, the Office notes that the subject lands were partially zoned Passive Open Space (POS) and partially zoned Residential (R2). Notwithstanding, this previous plan predated the National Planning Framework and therefore relates to a different planning policy framework. Furthermore, section 10(8) of the Act provides that there is no presumption in law that any land zoned in a particular development plan shall remain so zoned in any subsequent plan. Section 19(6) includes similar provisions in respect of a local area plan.

In relation to the reason that the lands lie outside the 25m buffer from the stream in relation to Policy Objectives CPO 13.1 and CPO 17.26 of the County Development Plan, this is not a matter that was raised by the Office in its recommendation on the proposed Variation at the MA stage as it related to consistency with the County Development Plan and was therefore relevant only to the draft Local Area Plan. This matter has been addressed separately under the section 31AO(7) notice.

In relation to the 100m set back from the M11, this matter was not raised by the Office in its recommendation at the MA stage.

No or no adequate reasons have therefore been provided to explain why the Planning Authority has decided to retain MA 20B when it is inconsistent with NPO 85 of the Revised NPF.

### [13] **Conclusion**

The Office is of the opinion that the Variation has not been made in a manner consistent with the following recommendation of the Office:

- MA Recommendation 3

The Variation includes a material alteration to the draft Variation to change the zoning of the land from Open Space (OS1) to New Residential – Priority 2 (RN2) inconsistent with the following objective of the NPF:

- NPO 85

## 3.2.2 MA 38 Lands at Charvey Court, Rathnew

### [1] **Material Alteration 38**

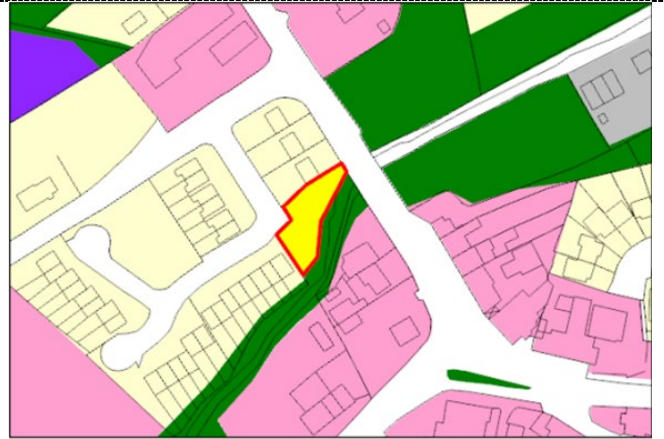
**MA 38** Rezone lands from Open Space (OS1) to New Residential – Priority 1 (RN1)<sup>1</sup>

[2a] <b>Approximate Site Area</b>	c. 0.06 ha
[2b] <b>CSO Boundary</b>	Inside CSO 2016 boundary Outside CSO 2022 boundary
[3a] <b>Zoning map extract of the land at draft stage</b>	[3b] <b>Zoning map extract of the land at material alterations stage</b>

<sup>1</sup> Lands zoned Open Space (OS1) at draft stage. MA 38 rezoned land to New Residential (RN1). The document titled Proposed Material Amendments to the Wicklow Town and Rathnew Plan 2025-2031 (p.44) proposes amending the zoning of land from Natural Areas (OS2) to New Residential – Priority 1 (RN1). For clarity, the lands that are the subject of MA 38 were zoned Open Space (OS1) at draft stage.

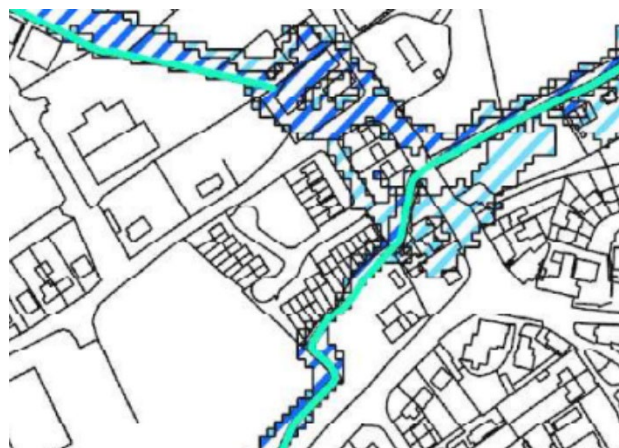


Zoned Open Space (OS1)



MA 38 – change zoning to New Residential – Priority 1 (RN1)

**[3c] Flood Risk map extract from MAP 4A – Flood Risk – Present Day – Wicklow Town-Rathnew Local Area Plan 2025-2031**



**/// Flood Zone A: High probability**

Where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 year for river flooding or 0.5% or 1 in 200 year for coastal flooding)

**/// Flood Zone B: Moderate probability**

Where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 year and 1% or 1 in 100 year for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 year for coastal flooding)

— Watercourses



Map and text extract from section 31AM(6) report:

*The image shows: in dark blue – area currently at 1:100 risk (Flood Zone A), in light blue - area currently at 1:1000 risk (Flood Zone B) and in pink - areas of future potential risk.*

**[4a] Zoning map extract of the land from the Wicklow Town-Rathnew Development Plan 2013-2019**



The lands were zoned Passive Open Space (POS) and Residential – Infill (RE) in the previous Wicklow Town Rathnew Development Plan 2013-2019.

**[4b] Link to Aerial Imagery**

[Aerial photography of the site and its surrounds.](#)

**[5] Specific Site Constraints or Designations**

Flood Zone A and B.

Hydrological link to European sites.

**[6] Servicing Tier & Infrastructure Status**

Land serviced.

**[7] Chief Executive's Recommendation**

[The CE's Report on the draft Local Area Plan \(MA stage\)](#) states that this material alteration was proposed by the Elected Members at the County Council meeting of 10<sup>th</sup> February 2025.

The CE's Report on the draft Local Area Plan (MA stage) agrees with the Office's MA Recommendations 2 and 3 and recommends that the Local Area Plan be made without MA 38 for the following reasons:

- a flood risk corridor has been identified along the Rathnew Stream in this area and lands identified as Flood Zones A and B are appropriately zoned for open space, which limits development and leaves land in their natural state;

- the OPW's 'future scenarios' maps of flood risk, identify the entire area as potentially at risk;
- residential use is identified as a 'highly vulnerable use' and should not be located in an area identified as at risk of flooding unless the Plan Making Justification Test is satisfied, in accordance with the Flood Guidelines;
- the Plan Making Justification Test has not been satisfied for these lands.
- the lands are within 25m of the river and should be appropriately zoned for open space uses in accordance with Policy Objective CPO 17.26 of the Development Plan.

#### **[8] Prescribed Bodies**

##### **Office of Public Works (OPW)**

The [OPW's submission on the material alterations to the draft Local Area Plan](#), dated 28<sup>th</sup> March 2025, states that as MA 38 overlaps with Flood Zone A and B and has not satisfied multiple criteria of the Plan Making Justification Tests, the zoning (RN1) is contrary to the Flood Guidelines and is not recommended by the Strategic Flood Risk Assessment (SFRA).

##### **Department of Housing, Local Government and Heritage, Development Applications Unit (NPWS)**

The [NPWS submission on the material alterations to the draft Local Area Plan](#), dated 28<sup>th</sup> March 2025, considers that:

- the site is hydrologically connected to downstream European sites, i.e. The Murrough Special Protection Area (SPA) and The Murrough Wetlands Special Area of Conservation (SAC); and
- the zoning (RN1) contravenes Objective CPO 17.26 of the County Development Plan, as the site is located within this core 25m buffer zone that should be kept as a riparian corridor.

Furthermore, the NPWS submission states that for any sites that are directly hydrologically linked to downstream European sites, additional text should be included in relation to all proposed projects having regard to the Habitats Directive.

#### **[9] Elected Members' Reasons**

The elected members did not accept the Chief Executive's recommendation and made the Local Area Plan with MA 38, for the following reasons:

- to utilise a small infill fully serviced site on existing residential zoned land;
- vacant sites in existing residential areas tend to be more likely to create antisocial behaviour such as dumping etc.; and
- the site is in the village centre and should be presentable and as neighbourly friendly as possible.

#### **[10] Environmental Assessments**

##### **SEA ER**

The ER prepared as part of the SEA by the Planning Authority also raises concerns in respect of the zoning objective under MA 38. The ER concludes that although the written provisions of the Local Area Plan and the County Development Plan would be likely to limit the development of this site, significant inconsistencies with these written provisions would be present if MA 38 was adopted as part of the Local Area Plan. Development of this site would potentially result in significant adverse effects on:

- flood risk – with associated adverse effects including on residents and people affected by any flood event and buildings and other material assets;
- adverse effects on ecology, ecological connectivity and non-designated habitats and species (residual effects would occur);
- loss of an extent of soil function arising from the replacement of semi-natural land covers with artificial surfaces (residual effects would occur);
- occurrence of visual impacts (residual effects would occur); and
- increased loadings on water bodies.

##### **AA Stage 1 Screening Report**

The Appropriate Assessment (AA) Stage 1 screening report prepared by the Planning Authority found that no Stage 2 assessment was required in relation to MA 38 as:

*Taking into account the measures that have been already integrated into the Draft Plan, the AA process for the Proposed Material Amendments has demonstrated that the implementation of Proposed Material Amendments will not result in any likely significant effect on any European site, apart from Proposed Material Amendment No. 41.*

#### **[11] Evaluation and Assessment**

The Office acknowledges that the lands the subject of MA 38 are relatively small and are located adjacent to existing residential development. However, the Revised NPF and the RSES provide a clear policy framework to ensure that inappropriate land use zonings in areas at risk of flooding and / or which have the potential to adversely affect water quality and water systems are avoided.

In relation to flood risk, this includes NPO 78 (formerly NPO 57) of the Revised NPF and RPO 7.12 of the RSES to avoid inappropriate land use zonings and development in areas that are at risk of flooding in accordance with the Flood Guidelines.

The Flood Guidelines provide a sound basis for planning authorities to identify, assess and take appropriate steps to manage flood risk in a sustainable manner within their area. The key message of the Flood Guidelines is to avoid development in areas at risk of flooding and to adopt a sequential approach to flood risk management.

Under the Flood Guidelines, highly vulnerable development such as housing is not appropriate in Flood Zone A or B unless it can be clearly demonstrated on a solid evidence base that the zoning or designation for development will satisfy all criteria of the plan making justification test (Justification Test).

The updated SFRA (Addendum I to the draft Wicklow Town-Rathnew Local Area Plan 2025-2031 SFRA, section 4.0) concludes that the Justification Test failed for the lands that are the subject of MA 38.

The Office considers therefore that the zoning of land at risk of flooding without passing the Justification Test is inconsistent with NPO 78 of the Revised NPF and RPO 7.12 of the RSES, to avoid inappropriate development in areas at risk of flooding that do not pass the Justification Test, in accordance with the Flood Guidelines.

Both the CE's Report on the draft Local Area Plan (MA stage) and NPWS highlight that the lands the subject of MA 38 are within the core 25m buffer zone of the river that should be kept as a riparian corridor in accordance with CPO 13.3 and CPO 17.26 of the County Development Plan which require the maintenance of a core riparian buffer zone of generally 25m along watercourses, with undeveloped floodplains generally being retained in as natural a state as possible to protect water quality and water systems. In addition, NPWS have highlighted that the site is hydrologically connected to downstream European sites, i.e. The Murrough SPA and The Murrough Wetlands SAC.

As set out above, the NPOs in relation to biodiversity have been expanded in the Revised NPF. NPO 59 of the former NPF required the integration of policies and objectives for the protection and restoration of biodiversity in statutory development plans. Referring to the National Biodiversity Action Plan, NPO 85 of the Revised NPF requires that the conservation, enhancement, mitigation and restoration of biodiversity be supported by integrating policies and objectives for the protection and restoration of biodiversity, including the principles of the mitigation hierarchy of - avoid, minimise, restore and offset - of potential biodiversity impacts, in statutory land use plans.

Having regard to the above, the Office is of the opinion that the zoning of land for residential development within the core riparian corridor for the Rathnew Stream is inconsistent with NPO 85 of the Revised NPF to integrate policies and objectives for the protection and restoration of biodiversity, including the first principle of the mitigation hierarchy to avoid potential biodiversity impacts, in statutory land use plans.

#### **[12] Consideration of the Elected Member's Reasons**

The reasons of the elected members for making the Local Area Plan with MA 38 do not address the matters raised in MA Recommendation 2 (flood risk management) or MA Recommendation 3 (environmental assessment).

In relation to the use of an infill site, anti-social behavior, and the amenity of the area, the Office acknowledges the concerns of the elected members but does not consider that they provide a reasonable basis for residential zoning of the lands having regard to the objectives of the Revised NPF and RSES to avoid development in areas at risk of flooding and to protect biodiversity.



No or no adequate reasons have been provided to explain why the Planning Authority has decided to retain MA 38 when it is inconsistent with NPO 78 (formerly NPO 57) and NPO 85 (formerly NPO 59) of the Revised NPF and RPO 7.12 of the RSES.

### [13] **Conclusion**

The Office is of the opinion that the Local Area Plan has not been made in a manner consistent with the following recommendations of the Office:

- MA Recommendation 2
- MA Recommendation 3

The Variation includes a material alteration to the draft Variation to change the zoning of the land from Open Space (OS1) to New Residential – Priority 1 (RN1) inconsistent with the following objectives of the NPF and the RSES:

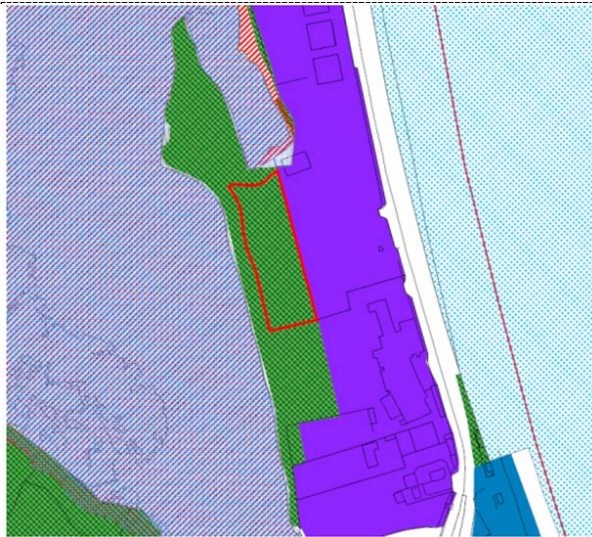
- NPO 78
- NPO 85
- RPO 7.12

### 3.2.3 MA 41 Lands at The Murrough, Wicklow Town

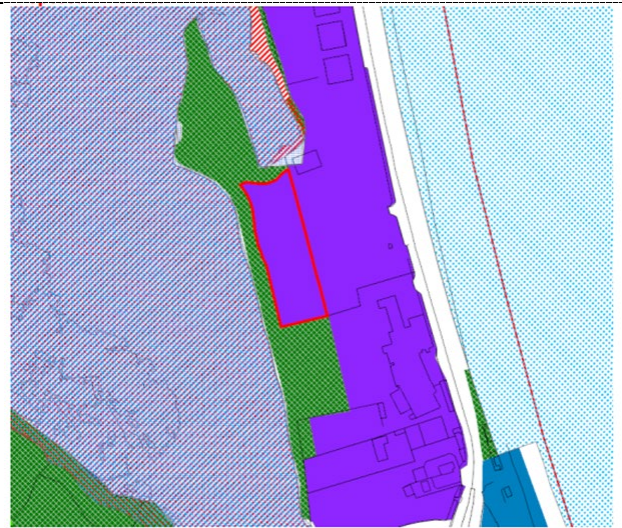
#### [1] **Material Alteration 41**

**MA 41** Rezone lands from Natural Areas (OS2) to Employment (E)

[2a] <b>Approximate Site Area</b>	c.1 ha
[2b] <b>CSO Boundary</b>	Outside CSO 2016 boundary Outside CSO 2022 boundary
[3a] <b>Zoning map extract of the land at draft stage</b>	[3b] <b>Zoning map extract of the land at material alterations stage</b>

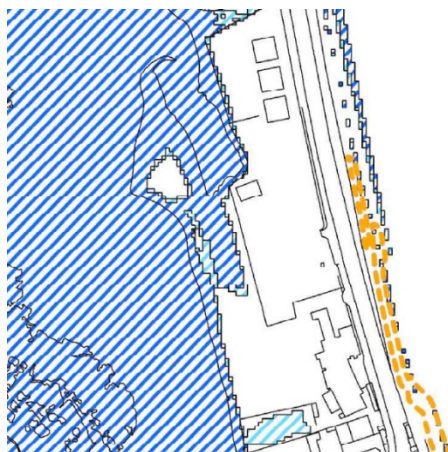


Zoned Natural Areas (OS2)



MA 41 – zoning changed from Natural Areas (OS2) to Employment (E)

**[3c] Flood Risk map extract from MAP 4A – Flood Risk – Present Day – Wicklow Town-Rathnew Local Area Plan 2025-2031**



**Flood Zone A: High probability**

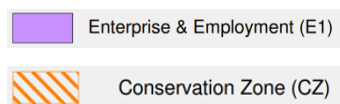
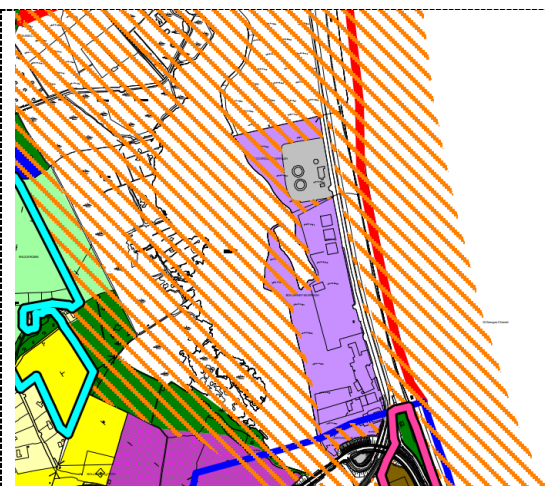
Where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 year for river flooding or 0.5% or 1 in 200 year for coastal flooding)

**Flood Zone B: Moderate probability**

Where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 year and 1% or 1 in 100 year for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 year for coastal flooding)

**Flood Risk Management Infrastructure**

**[4a] Zoning map extract of the land from the Wicklow Town- Rathnew Development Plan 2013-2019**



The lands were zoned Enterprise and Employment (E1) in the Wicklow Town Rathnew Development Plan 2013-2019

#### [4b] Link to Aerial Imagery

[Aerial photography of the site and its surrounds.](#)

#### [5] Specific Site Constraints or Designations

Flood zone A and B

Adjacent to European sites – The Murrough SPA and SAC

#### [6] Servicing Tier & Infrastructure Status

The site is not serviced with a sewer network. Any development on the site would have to include a network extension of c. 250m.

#### [7] Chief Executive's Recommendation

The [CE's Report on the draft Local Area Plan \(MA stage\)](#) states that this material alteration was proposed by the Elected Members at the County Council meeting of 10<sup>th</sup> February 2025.

The CE's Report on the draft Local Area Plan (MA stage) agrees with the Office's MA Recommendations 2 and 3 and recommends that the Local Area Plan be made without MA 41 for the following reasons:

- the lands in question are zoned OS2 Natural Areas in the draft Local Area Plan having regard to their location vis-a-vis the adjacent European Site and its conservation objectives and sensitivities;

- the detailed plan preparation process seeks to facilitate zoning that will help to avoid inappropriate development being permitted in areas of elevated sensitivity, such as in areas at risk of flooding or areas of elevated cultural/built/maritime heritage, landscape, water or ecological sensitivity; and
- the approach to land use zoning contained within the draft Local Area Plan remains relevant as it contributes towards the protection of European sites with development objectives / zoning for lands designated as European sites not provided for and where feasible, land directly adjacent to European sites is zoned so as to form a buffer zone, protecting potentially valuable ecological areas including contributing towards maintaining ecological linkage.

Taking into account the submissions received, and the conclusions of the Stage 2 AA and SFRA, the CE's Report on the draft Local Area Plan (MA stage) does not support the Employment zoning due to concerns about the impact of development on the adjacent European sites and flood risk.

#### **[8] Prescribed Bodies**

##### **OPW**

The [OPW's submission on the material alterations to the draft Local Area Plan](#), dated 28<sup>th</sup> March 2025, states that as MA 41 overlaps with Flood Zone A and B, has not satisfied multiple criteria of the Justification Tests and the zonings are noted as not appropriate. The submission states that the rezoning of these lands is contrary to the Flood Guidelines and is not recommended by the Strategic Flood Risk Assessment (SFRA).

##### **Department of Housing, Local Government and Heritage, Development Applications Unit (NPWS)**

The [NPWS submission on the material alterations to the draft Local Area Plan](#), dated 28<sup>th</sup> March 2025, considers that:

- The proposed zoning is located approximately 25m from the boundary of The Murrough SPA and Broad Lough.
  - The SPA is designated for a number of over-wintering waterfowl Special Conservation Interest (SCI) species which are found within the Broad Lough area, and are sensitive to disturbance due to construction operations and

recreational pressure, and Conservation Objectives for a number of the SCI species deal with the issue of disturbance.

- Disturbance relates to any activity that results in a waterbird being displaced from an area and the disturbance zone of influence on birds as a result of construction activities is generally considered to be 300m.
- Several waterbird species may at times use habitats situated within the immediate hinterland of the SPA or in areas ecologically connected to it. As such, significant habitat changes or increased levels of disturbance within these areas could result in the displacement of one or more of the listed waterbird species from areas within the SPA, and/or a reduction in their numbers.
- A Conservation Objective target for the SPA is to have sufficient area of utilisable habitat available in ecologically important sites outside the SPA.
- It is not known whether zoning this land will lead to loss of such supporting habitat, undermining the conservation objectives for the SPA, however given the close proximity of the SPA, it is likely SCI birds utilise this piece of land for foraging and/or roosting.
- While the rezoning will not increase recreational pressure from walkers, dogs and bird watchers directly, it will remove habitat in an area where walkers cannot get to, thereby forcing birds into other areas where disturbance pressures may be higher.
- A reduction in water quality from construction activities could result in the degradation of sensitive habitats present, which in turn could negatively affect the SCI bird species that rely upon these habitats for foraging and/or roosting, and the quantity and quality of prey available to SCI bird species, which (in the absence of mitigation) could occur to such a degree that they result in significant effects which could have implications for the conservation objectives of the SPA. As birds are mobile species, SCI species from SPAs along the coast could also use The Murrough SPA and its hinterland as an ex-situ site, and therefore the potential impacts and zone of influence of the proposed material amendment, could extend a significant distance from the site.

- The zoning lies within 25 metres of the Murrough Wetlands SAC and the Broad Lough wetland which contains two Qualifying Interest (QI) habitats for which the SAC is designated, namely 1410 Mediterranean salt meadows (*Juncetalia maritima*) and 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*).
  - The proposed material amendment raises concern due to potential impacts such as on water quality during construction and operation on these sensitive coastal habitats.
  - The release of contaminated surface water runoff and/or an accidental spillage or pollution event into any surface water features during construction has the potential to affect water quality in the receiving aquatic environment, which could include the release of sediment into receiving waters and the subsequent increase in mobilised suspended solids, and the accidental spillage and/or leaks of contaminants such as fuel, oils, and lubricants.
  - Damage to the QI habitats due to drainage impacting on hydrology and construction of a track for a tracked vehicle at Broad Lough was noted during a 2019 site survey and therefore these cumulative impacts must be included in the Appropriate Assessment.
- As MA 41 is located within Flood Zone A, policy objectives CPO 13.3 and 17.26 regarding 25 metre setbacks from watercourses and CPO 14.04 of the County Development Plan to ensure natural coastal defences are protected would be contravened.

In conclusion, in the absence of an objective assessment of the impact of the zoning of MA 41, the NPWS considers that it cannot be concluded that there is no risk of adverse effects on the integrity of the European sites and while development within and close to European sites is not precluded, in order for the proposed zoning to be deemed acceptable, any likely significant effects of the proposed objective would need to be fully assessed and addressed by means of site-specific mitigation measures. High-level mitigation measures proposed in the draft Natura Impact Report are not deemed appropriate to deal with the impacts of zoning of MA 41 for development.

#### **[9] Elected Members' Reasons**

The elected members did not accept the Chief Executive's recommendation and made the Local Area Plan with MA 41, for the following reasons:

- it is crucial to retain the existing employment zoning for this area to support the continued economic development of Wicklow Port and the surrounding region;
- rezoning this site would jeopardise the operations of an established, long-standing, multi-generational shipping and logistics business that has been integral to the local economy;
- removing the employment zoning could negatively impact current and future investments in Wicklow Port and beyond;
- the established activities on site are essential for the supply of construction timber nationally and are supportive of the Programme for Government declared objectives;
- the existing use of the site is low impact above ground storage of timber bales;
- retaining employment zoning is absolutely compatible with the area and valuable employment uses can be achieved with simple, effective mitigation measures, which could include establishing a buffer zone between the surrounding SAC, ensuring compliance with ecological policy objectives and separating commercial activities from environmentally sensitive areas; and
- it is imperative that the draft Local Area Plan be amended to retain employment zoning for this 1 ha site.

#### **[10] Environmental Assessments**

##### **SEA ER**

The ER prepared as part of the SEA by the Planning Authority outlines the findings of the Stage 2 AA, set out below, and the findings of the SFRA which identifies the majority of the lands the subject of MA 41 are at high risk of present day flooding – Flood Zone A and additional lands are within Flood zone B and the entire site is within the OPW's future climate change scenarios areas at risk.

The ER highlights a 2024 planning application for the elected members attention, which was withdrawn following a recommendation for refusal for reasons including the requirement for AA, flood risk due to its location in Flood Zone A and B, inconsistency with the Flood Guidelines, and contravention of policy objectives of the County Development Plan and the Habitats Directive.

The ER states that although the written provisions of the Local Area Plan and the County Development Plan would be likely to limit the development of the lands subject to MA 41, significant inconsistencies with these written provisions would be present if MA 41 was adopted as part of the Local Area Plan. The amendment would not provide the most evidence-based framework for development and has the potential to undermine sustainable development and proper planning - with potential for associated unnecessary adverse environmental effects on various environmental components, including:

- adverse effects on ecology, ecological connectivity and non-designated habitats and species (residual effects would occur);
- flood risk – with associated adverse effects including on residents and people affected by any flood event and buildings and other material assets;
- loss of an extent of soil function arising from the replacement of semi-natural land covers with artificial surfaces (residual effects would occur);
- occurrence of visual impacts (residual effects would occur); and
- increased loadings on water bodies.

## **Stage 2 Appropriate Assessment (AA)**

The Addendum I to the AA NIR prepared by the Planning Authority found that in respect of MA 41:

- the approach to land use zoning followed for the draft Local Area Plan remains relevant and the OS zoning objective at these lands would help to ensure the protection of European sites;



- although the lands are not within a European site, development of this site would have the potential, if unmitigated, to remove any level of buffering offered by the existing undeveloped space;
- buffering helps to protect against noise and light disturbance and emissions (such as surface water);
- if unmitigated, MA 41 would be contrary to Objective WTR14 from the draft Local Area Plan, which seeks to facilitate the continued operation of existing business/commercial activities in this area while ensuring the protection of European sites;
- the draft Local Area Plan, in alignment with the policies and objectives of the existing County Development Plan (as varied), includes measures to:
  - Minimise potential fragmentation, via light and noise pollution.
  - Facilitate the enhancement of ecological corridors such as, planting of native tree species and/or management of habitats such as riverine systems.
  - Ensure that habitat or species fragmentation does not occur in relation to the connectivity of the ecological resources necessary to maintain the ecological integrity of European sites related to non-designated sites and specific ecological resources and/or habitats such as hedgerows and waterways.
- If unmitigated, would have the potential to affect the ecological functioning and integrity of the SPA by potentially impacting on aspects such as flight lines, predator risk and lighting effects on birds using the site, and would also have the potential to affect species such as Otter using the SAC; and
- the draft Local Area Plan, including its alignment with the policies and objectives of the existing County Development Plan (as varied), has many robust policies and objectives to ensure the protection of ground and surface water quality, riverine systems and habitat quality.

Taking account of the above, the Addendum I to the AA NIR concludes that if the approach to zoning in the draft Local Area Plan for the subject lands is abandoned, and

MA 41 incorporated into the Local Area Plan, the amendment would need to be modified in order to allow:

- the final AA Natura Impact Report to demonstrate that, following the inclusion of suitable mitigation measures, the Local Area Plan to be adopted will not result in any adverse effects to the ecological integrity of any European site; and
- for the Local Area Plan, incorporating MA 41, to be adopted in compliance with the Habitats Directive.

The modification to MA 41 would be to add the following local objective for the subject lands:

*All proposed projects at this site shall: have full regard to the Habitats Directive (with particular regard for the Murrough SPA and the Murrough Wetlands SAC), including being subject to AA that identifies and addresses any likely significant effects. In doing so, proposed projects and associated AAs in this area shall, as relevant:*

- *Be informed by appropriately targeted ecological survey(s) and assessment(s) of the Qualifying Interests of the SAC and SPA that consider issues including:*
  1. *Bird usage of the adjacent wetland areas (river corridor and intertidal), including spatial and behavioural considerations and associated role in supporting the QIs of the site as a whole.*
  2. *Use of the area adjacent during darkness, including a consideration of lighting effects on spatial and behavioural considerations.*
  3. *Use of the area for fish and mammal movements – notably Otter, Atlantic salmon, bats – to have consideration of lighting effects on connectivity for these mobile species.*

*And*

- *Give due consideration to any requirement for project level mitigation that arises from the surveying and assessment described above, ensuring that prescribed mitigation measures are proven, robust and address the need for certainty in achievement of mitigation of potentially significant adverse effects. Notably this*

*should include a presumption to achieve significant net benefit to the features which may otherwise be impacted.*

*To avoid the potential for impacts on the aquatic environment and associated species, key components of nearby European sites, any development must adequately address the management of surface water run-off and drainage at the construction and operational phases to ensure that no adverse impacts may occur to the sites. It should be recognised that this may require significant exceedance of any existing measures to ensure that any development provides a net benefit over its life, to the nearby sites and wider aquatic environment.*

#### **[11] Evaluation and Assessment**

The Office recognises the lands are located adjacent to port activities, and were previously zoned for Enterprise and Employment use. Notwithstanding, the NPF and the RSES provide a clear policy framework to ensure that inappropriate land use zonings and development in areas at risk of flooding is avoided, and/or to protect designated sites, biodiversity and the environmental quality of the coastal resource.

In relation to flood risk, this includes NPO 78 (formerly NPO 57) of the Revised NPF and RPO 7.12 of the RSES to avoid inappropriate land use zonings and development in areas of risk of flooding in accordance with the Flood Guidelines.

The Flood Guidelines provide a sound basis for planning authorities to identify, assess and take appropriate steps to manage flood risk in a sustainable manner within their area. The key message of the Flood Guidelines is to avoid development in areas at risk of flooding and to adopt a sequential approach to flood risk management.

Under the Flood Guidelines, less vulnerable development such as employment uses are not appropriate in Flood Zone A unless it can be clearly demonstrated on a solid evidence base that the zoning or designation for development will satisfy all criteria of the plan making justification test (Justification Test).

The updated SFRA (Addendum I to the Local Area Plan SFRA, section 4.0) concludes that the Justification Test failed for the lands that are the subject of MA 41.

The Office considers therefore that the zoning of land at risk of flooding without passing the Justification Test is inconsistent with NPO 78 (formerly NPO 57) of the Revised NPF and RPO 7.12 of the RSES, to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

In relation to environment protection, the policy framework includes NPO 1 (formerly NPO 75) of the Revised NPF and RPO 3.4 to ensure all plans are subject to SEA and AA as appropriate, and NPO 85 (formerly NPO 59), NPO 87 (formerly NPO 59) of the revised NPF and RPO 7.16 of the RSES to support the implementation of the Birds and Habitats Directives and ensure alignment with development plans, and NPO 52 to sustain the environmental quality of the coastal resource.

The subject lands are located approximately 25m from the boundary of The Murrough SPA, which is designated for a number of over-wintering waterfowl Special Conservation Interest (SCI) species. The lands also lie within 25 metres of the Murrough Wetlands SAC and the Broad Lough wetland which contains two Qualifying Interest (QI) habitats for which the SAC is designated, namely 1410 Mediterranean salt meadows (*Juncetalia maritima*) and 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*).

As outlined above, MA 41 was subject to SEA and AA. The Addendum I to the AA NIR (the NIR) states that MA 41 would have the potential, if unmitigated, to affect the ecological functioning and integrity of the SPA by potentially impacting on aspects such as flight lines, predator risk and lighting effects on birds using the site. The NIR also states that MA 41 would also have the potential to affect species such as Otter using the SAC. The NPWS submission sets out in detail the potential likely significant effects of the zoning under MA 41 in view of the site's conservation objectives, which the Office accepts. It is noted, however, that the Otter referred to in the NIR is not a Qualifying Interest for the SAC and as such should be considered in terms of the SEA and wider impacts on biodiversity, rather than AA. In that context, the Otter is an Annex II species under the Habitats Directive requiring impact assessment and protection and has been assessed as such by the Office.

In terms of mitigation, the NIR (section 5 Mitigation Measures) states that MA 41 would need to be further modified in order to demonstrate that, following the inclusion of suitable mitigation measures, the Plan to be adopted will not result in any adverse effects to the

ecological integrity of any European site; and for the LAP to be adopted in compliance with the Habitats Directive. The Office notes that the elected members modified the Local Area Plan to add the mitigation measures for the MA 41 lands.

These measures are identified as a requirement that all proposed projects at the site shall have full regard to the Habitats Directive (with particular regard for The Murrough SPA and The Murrough Wetlands SAC) including being subject to AA, and that in doing so the proposed projects shall, as relevant, be informed by appropriate targets, ecological surveys and assessment of the qualifying interests of the SAC and SPA, and give due consideration to any requirement for project level mitigation. The measures are outlined in full under [10] Environmental Assessments above.

The Office notes, however, that these mitigation measures largely rely on requiring compliance with Article 6 of the Habitats Directive for mitigation and the NPWS submission does not consider that these high-level mitigation measures are appropriate to deal with the impacts of zoning of MA 41 for development. On this basis, the NPWS submission states that it cannot be concluded that there is no risk of adverse effects on the integrity of the European sites.

Having regard to the above, the Office is of the opinion that a complete, precise and definitive finding and conclusion cannot be reached that there would be no risk of adverse effects on the integrity of The Murrough SPA and The Murrough Wetlands SAC, and reasonable scientific doubt remains as to the adverse effects of development facilitated under the Employment (E) zoning objective on the European sites in question.

In addition to the above, NPO 52 of the Revised NPF requires that Ireland's coastal resource is managed to sustain its physical character and environmental quality. NPO 85 of the Revised NPF also requires the integration of policies and objectives for the protection and restoration of biodiversity, including the principles of the mitigation hierarchy, in statutory land use plans.

Having regard to the potential adverse effects on ecology, ecological connectivity and non-designated habitats and species (residual effects would occur) identified in the SEA ER, the affected species such as Otter using the SAC, the proximity to the SAC, SPA, Broad Lough Wetland and the water body and potential impacts on the environmental quality of the coastal resource, the Office is of the opinion that the zoning of land for

employment development at this location is also inconsistent with NPO 52 and NPO 85 of the Revised NPF.

#### **[12] Consideration of Elected Member's Reasons**

The reasons of the elected members for making the Local Area Plan with MA 41 do not address the matters raised in MA Recommendation 2 (flood risk management).

In relation to the reason that the Employment zoning is compatible with the area as employment uses can be achieved with effective mitigation measures, the CE's report (MA stage) and the SEA ER consider that the Open Space zoning in the draft Local Area Plan remains relevant to help to ensure the protection of European sites. In addition, the NPWS do not consider the high level mitigation measures are appropriate to deal with the impacts of the Employment zoning, and as it cannot be concluded that there is no risk of adverse effects on the integrity of European sites for the reasons outlined in the assessment and evaluation above.

In relation to the reason that the site is currently used for storage, the Office notes that a planning application for the extension of an existing storage yard onto the lands that are the subject of MA 41 was withdrawn in January 2025.

In relation to the reasons that MA 41 is crucial to support the continued economic development of Wicklow Port and the surrounding region, the operation of a shipping and logistics business which is integral to the local economy, and that the established activities on site are essential to the national supply of construction timber which are supportive of the Programme for Government objectives, the Office acknowledges the concerns of the elected members, but does not consider that they provide a reasonable basis for the Employment zoning of the lands having regard to the objectives of the RSES and County Development Plan to avoid development in areas at risk of flooding and to protect designated sites and the environmental quality of the coastal resource.

No or no adequate reasons have been provided to explain why the Planning Authority has decided to retain MA 41 when it is inconsistent with NPO 78 (formerly NPO 57), NPO 85 (formerly NPO 59), and NPO 52 (formerly NPO 41a) of the Revised NPF and RPO 7.12 of the RSES.

#### **[14] Conclusion**

The Office is of the opinion that the Local Area Plan has not been made in a manner consistent with the following recommendations of the Office:

- MA Recommendation 2
- MA Recommendation 3

The Variation includes a material alteration to the draft Variation to change the zoning of the land from Natural Areas (OS2) to Employment (E) inconsistent with the following objectives of the Revised NPF and RSES:

- NPO 52
- NPO 78
- NPO 85
- NPO 87
- RPO 7.12
- RPO 7.16

#### **4. Opinion of the Office and Reasons**

31. Having considered the Variation as adopted, under section 31AM(7) of the Act, the Office is of the opinion that the said Variation has not been made in a manner consistent with the recommendations of the Office.
32. Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the 31AM(6) notice letter received by the Office on 15<sup>th</sup> May 2025 adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the County Development Plan as varied by the Variation sets out an overall strategy for the proper planning and sustainable development of the area.

33. As you will be aware, the Office has various functions in respect of evaluating and assessing proposed variations to development plans, summarised as follows:

- under section 31AM(1) of the Act, the Office has a statutory duty to evaluate and assess, at least at a strategic level, planning authority proposals in respect of proposed variations to development plans;
- under section 31AM(2) the Office shall endeavour to ensure that where appropriate it addresses the legislative and policy matters set out at (a) to (e) therein;
- under section 31AM(3)(a), in making observations or submissions in respect of any evaluation or assessment of a proposed variation the Office shall make, to the relevant planning authority, such recommendations in relation to the Office's evaluation and assessments as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- under section 31AM(7), the Office shall consider whether or not the variation as made by the planning authority is, in the opinion of the Office, consistent with any recommendations made by the Office;
- in performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act; and
- under section 31S, the Office must, in performing its functions, have regard to:
  - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,



- b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
- c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
- d) the requirements of relevant acts of the European Union, in particular, those relating to —
  - (i) the Environmental Impact Assessment Directive,
  - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
  - (iii) the Habitats Directive, and
  - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

34. Accordingly, having considered the Variation in light of the above statutory functions and the letter from the Planning Authority received on 15<sup>th</sup> May 2025 issued under section 31AM(6), the Office is of the opinion that the Variation has not been made in a manner consistent with the recommendations of the Office. In particular:

- I. The Variation includes material alterations to the draft Variation to change the zoning of the land from Open Space (OS1) to New Residential – Priority 1 (RN1) (MA 38), and from Natural Areas (OS2) to Employment (E) (MA 41) located in Flood Zone A and B where the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines), issued under section 28 of the Act, indicate that such uses are not appropriate unless a Justification Test is passed. The material alterations are therefore inconsistent with NPO 78 of the Revised NPF and RPO 7.12 of the RSES to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

- II. The Variation includes material alterations to the draft Variation to zone land for development in areas of environmental and biodiversity sensitivity (MA 20B, MA 38 and MA 41), including land within the riparian buffer of a watercourse (MA 38 and MA 41), and adjacent to The Murrough SPA and The Murrough Wetlands SAC and the coastal resource at Broad Lough (MA 41).

Furthermore, a complete, precise and definitive finding and conclusion has not been reached that there would be no risk of adverse effects on the integrity of The Murrough SPA and The Murrough SAC, and reasonable scientific doubt remains as to the adverse effects of development facilitated under the Employment (E) zoning objective on the European sites in question (MA 41).

The material alterations are therefore inconsistent with NPO 52, NPO 85, and NPO 87 of the Revised NPF and RPO 7.16 of the RSES.

35. No or no adequate reasons relating to the proper planning and sustainable development of the area have been provided to explain why the Planning Authority has failed to implement the objectives of the NPF and the RSES, or how, notwithstanding this failure, the County Development Plan as varied by the Variation sets out an overall strategy for the proper and sustainable development of the area.
36. In making the Variation with the material alterations, the Planning Authority has made the Variation contrary to the requirements of section 13(7) of the Act which restricts consideration to the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government.
37. The factors that the Office has taken into account in forming this opinion are as follows:
- (i) Revised National Planning Framework (NPF):

- NPO 52      Ensure that Ireland's coastal resource is managed to sustain its physical character and environmental quality.
- NPO 78      Promote sustainable development by ensuring flooding and flood risk management informs place-making by:
- Avoiding inappropriate development in areas at risk of flooding that do not pass the Justification Test, in accordance with the Guidelines on the Planning System and Flood Risk Management;
  - Taking account of the potential impacts of climate change on flooding and flood risk, in line with national policy regarding climate adaptation.
- NPO 85      In line with the National Biodiversity Action Plan; the conservation, enhancement, mitigation and restoration of biodiversity is to be supported by:
- Integrating policies and objectives for the protection and restoration of biodiversity, including the principles of the mitigation hierarchy of - avoid, minimise, restore and offset - of potential biodiversity impacts, in statutory land use plan.
  - Retention of existing habitats which are currently important for maintaining biodiversity (at local/ regional/national/international levels), in the first instance, is preferable to replacement/restoration of habitats, in the interests of ensuring continuity of habitat provision and reduction of associated risks and costs.
- NPO 87      Enhance the conservation status and improve the management of protected areas and protected species by:
- Implementing relevant EU Directives to protect Ireland's environment and wildlife and support the objectives of the National Biodiversity Action Plan;

- Developing and utilising licensing and consent systems to facilitate sustainable activities within Natura 2000 sites;
- Continued research, survey programmes and monitoring of habitats and species.

(ii) Eastern and Midland Regional Assembly, Regional Spatial and Economic Strategy (RSES):

RPO 7.12 Future statutory land use plans shall include Strategic Flood Risk Assessment (SFRA) and seek to avoid inappropriate land use zonings and development in areas at risk of flooding and to integrate sustainable water management solutions (such as SuDS, nonporous surfacing and green roofs) to create safe places in accordance with the Planning System and Flood Risk Assessment Guidelines for Local Authorities.

RPO 7.16 Support the implementation of the Habitats Directives in achieving an improvement in the conservation status of protected species and habitats in the Region and to ensure alignment between the core objectives of the EU Birds and Habitats Directives and local authority development plans.

(iii) The CE's Reports on the draft Variation and draft Local Area Plan and the material alteration stages of both, and the section 31AM(6) notice letter;

(iv) Matters generally within the scope of section 13 of the Act;

(v) The Office's statutory obligations under the Act; and

(vi) The matters listed at section 15(1)(a) - (e) of the Climate Action and Low Carbon Development Act 2015 (as amended by the Climate Action and Low Carbon Development Act 2021).

38. In light of the above, the Office is, therefore, of the opinion that the Variation has not been made in a manner consistent with its recommendations as set out in the submission dated 31<sup>st</sup> March 2025, and that the decision of the Planning

Authority results in the making of a Variation to the County Development Plan in a manner that fails to set out an overall strategy for the proper planning and sustainable development of the area, and as a consequence the use by the Minister of his functions to issue a direction under section 31 would be merited.

## **5. Recommendation to the Minister**

39. Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter in a manner that, in the opinion of the Office, will ensure that the County Development Plan as varied by the Planning Authority sets out an overall strategy for proper planning and sustainable development as set out in the draft direction to the Planning Authority accompanying this notice letter, i.e.:

Delete the following Material Alterations from the adopted Variation such that the subject lands revert to as indicated in the draft Variation:

- (i) **MA 20B** - i.e. the subject lands revert to Open Space (OS1), from New Residential – Priority 2 (RN2).
- (ii) **MA 38** - i.e. the subject lands revert to Open Space (OS1), from New Residential – Priority 1 (RN1).
- (iii) **MA 41** - i.e. the subject lands revert to Natural Areas (OS2), from Employment (E).

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

40. Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at [plans@opr.ie](mailto:plans@opr.ie).

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Niall Cussen', is displayed within a light gray rectangular box.

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**Niall Cussen**

Planning Regulator

Designated Public Official under the Regulation of Lobbying Act 2015

**DRAFT DIRECTION IN THE MATTER OF SECTION 31**  
**OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**Variation No. 2 to the Wicklow County Development Plan 2022-2028**

“Variation” means Variation No. 2 to the Wicklow County Development Plan 2022-2028.

“Development Plan” means the Wicklow County Development Plan 2022-2028.

“Planning Authority” means Wicklow County Council.

“RSES” means the Regional Spatial and Economic Strategy for the Eastern and Midlands Region.

“Revised NPF” means the Revised National Planning Framework 2025.

The Minister at the Department of Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (No.30 of 2000) (as amended) ("the Act") and consequent to a recommendation made to him by the Office of the Planning Regulator, hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Variation No. 2 to the Wicklow County Development Plan 2022-2028) Direction 2025.
- (2) The Planning Authority is hereby directed to take the following steps with regard to the Variation:
  - (a) Delete the following Material Alterations from the adopted Variation such that the subject lands revert to as indicated in the draft Variation:
    - (i) **MA 20B** - i.e. the subject lands revert to Open Space (OS1), from New Residential – Priority 2 (RN2).
    - (ii) **MA 38** - i.e. the subject lands revert to Open Space (OS1), from New Residential – Priority 1 (RN1).
    - (iii) **MA 41** - i.e. the subject lands revert to Natural Areas (OS2), from Employment (E).

- (b) and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

## **STATEMENT OF REASONS**

- I. The Variation includes material alterations to the draft Variation to change the zoning of the land from Open Space (OS1) to New Residential – Priority 1 (RN1) (MA 38), and from Natural Areas (OS2) to Employment (E) (MA 41) located in Flood Zone A and B where the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines), issued under section 28 of the Act, indicate that such uses are not appropriate unless a Justification Test is passed. The material alterations are therefore inconsistent with NPO 78 of the Revised NPF and RPO 7.12 of the RSES to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

- II. The Variation includes material alterations to the draft Variation to zone land for development in areas of environmental and biodiversity sensitivity (MA 20B, MA 38 and MA 41), including land within the riparian buffer of a watercourse (MA 38 and MA 41), and adjacent to The Murrough SPA and The Murrough Wetlands SAC and the coastal resource at Broad Lough (MA 41).

Furthermore, a complete, precise and definitive finding and conclusion has not been reached that there would be no risk of adverse effects on the integrity of The Murrough SPA and The Murrough SAC, and reasonable scientific doubt remains as to the adverse effects of development facilitated under the Employment (E) zoning objective on the European sites in question (MA 41).

The material alterations are therefore inconsistent with NPO 52, NPO 85, and NPO 87 of the Revised NPF and RPO 7.16 of the RSES.

- III. The Variation has not been made in a manner consistent with, and has failed to implement, the recommendations of the Office of the Planning Regulator under section 31 AM of the Act.
- IV. The Minister is of the opinion that the Variation to the Development Plan is not consistent with the above-mentioned objectives of the Revised NPF and the



RSES, and fails to set out an overall strategy for the proper planning and sustainable development of the area.

V. The Variation is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.



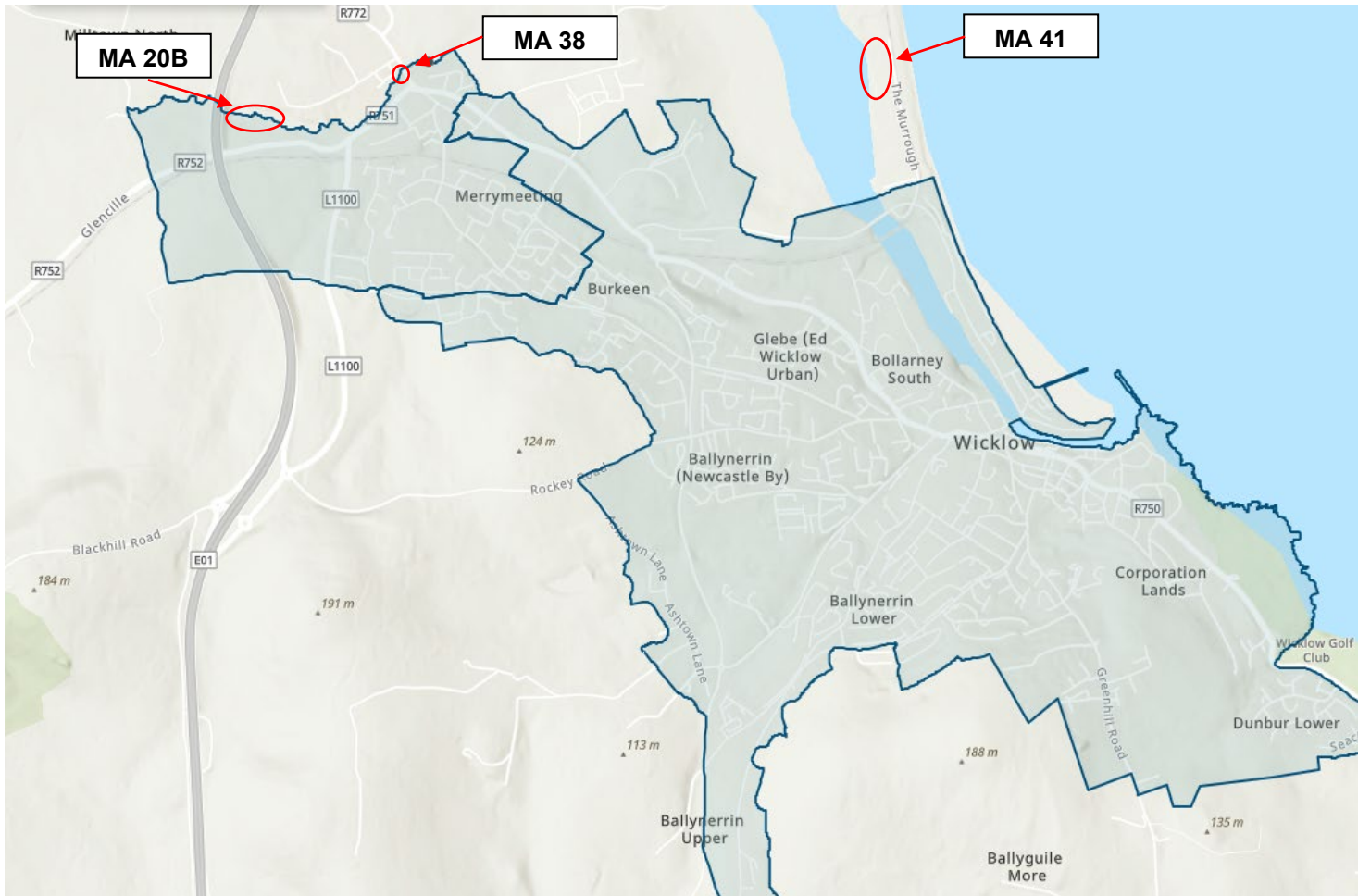
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Office of the  
Planning Regulator

## **Appendix 1: Mapping of Sites Identified in Draft Direction**

## Aerial View of Wicklow Town and Rathnew with subject sites outlined in red



## Wicklow Town and Rathnew with 2022 CSO boundary and general location of subject sites





**Aerial view of MA 20B with general location outlined in red**





**Aerial view of MA 38 with general location outlined in red**



**Aerial view of MA 41 with general location outlined in red**

