



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

27th August 2025

John Cummins,
Minister of State,
Department of Housing, Local Government and Heritage,
Custom House,
Dublin 1,
D01 W6X0.

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AN(4) 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 pursuant to section 31AN(4) of the Planning and Development Act 2000, as amended (the Act) in the context of Variation No. 2 (the Variation) to the Wicklow County Development Plan 2022-2028 (the County Development Plan). In particular, I write arising from consideration by the Office of the Planning Regulator (the Office) of the following:
 - a. the Notice of Intent to issue a Direction issued to Wicklow County Council (the Planning Authority) by your office on 19th June 2025;
 - b. the report of the Chief Executive of the Council issued to the Office on 7th August 2025 on the submissions and observations received by the Planning Authority (the CE's Report); and
 - c. submissions made directly by elected members of the Planning Authority to this Office.
2. The Office has carefully considered the CE's Report, the submissions made therein, and the submissions made directly to this Office. Further details are provided at sections 2 - 4 below.

3. Having regard to section 31AN(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the Direction with minor amendments identified in red text as per the attached proposed final Direction.
4. This letter is laid out under the following headings:
 1. [Draft Direction](#)
 2. [Consultation on Draft Direction](#)
 3. [Chief Executive's Recommendation](#)
 4. [Consideration of Submissions](#)
 - 4.1 [Part 2\(a\)\(i\) MA 20B Lands at Gleneary Road, Rathnew](#)
 - 4.2 [Part 2\(a\)\(ii\) MA 38 Lands at Charvey Court, Rathnew](#)
 - 4.3 [Part 2\(a\)\(iii\) MA 41 Lands at The Murrough, Wicklow Town](#)
 5. [Recommendation to the Minister](#)

1. Draft Direction

5. The draft Direction issued by the Minister (draft Direction) was as follows:

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.

2. Consultation on Draft Direction

6. The public consultation on the draft Direction took place from 3rd July to 16th July 2025 inclusive, together with the consultation on the draft Direction on the Local Area Plan.
7. As the purpose of the Variation was to integrate the land use zoning map from the Local Area Plan into the County Development Plan, the draft Directions on the Local Area Plan and Variation to the County Development Plan concern the same sites, and require the Planning Authority to apply the same changes to both plans. The CE's Report includes all submissions made during the consultation period, including those which refer solely to the Local Area Plan. Further to section 31AN(4) of the Act, the Office is required to consider the CE's Report on the submissions. Therefore, the Office's consideration of the CE's Report and submissions made to the Planning Authority (sections 3 and 4) include all submissions referenced therein notwithstanding the overlap with the Local Area Plan.
8. The CE's Report does not summarise the submissions made, rather it includes copies of all submissions made to the Planning Authority by elected members, members of the public and prescribed bodies, either in part or in full.
9. The CE's Report states that **nine (9) submissions**¹ were received in relation to the draft Direction during the statutory public consultation period. The breakdown of views contained within the submissions is as follows:

Submissions to Planning Authority			
Draft Direction	Submission from / type	Support	Oppose
Part 2 (a) (i)	Councillor	-	Cllr. John Snell

¹ Submissions may relate to multiple parts of a draft direction. Therefore, the total numbers in support of, or opposing, the draft direction may exceed the total number of submissions made.

Submissions to Planning Authority			
Draft Direction	Submission from / type	Support	Oppose
(MA 20B)	Prescribed authority	-	-
	Public	-	Mary Byrne
Part 2 (a) (ii) (MA 38)	Councillor	-	Cllr. John Snell Cllr. Joe Behan
	Prescribed authority	OPW	-
	Public	-	Paul Walsh
Part 2 (a) (iii) (MA 41)	Councillor	-	Cllr. John Snell Cllr. Joe Behan 3. Cllr. Peter Stapleton 4. Cllr. Stephen Stokes
	Prescribed authority	OPW ²	-
	Public	-	R.F. Conway & Company Ltd. Conway Roadfreight Ltd.

10. Section 31(10) of the Act allows elected members of the Planning Authority to make submissions directly to the Office during the consultation period. The Office received **two (2) submissions** directly from elected members, which although they refer to the proposed re-zoning under the draft Direction on the Local Area Plan, these are the same issues to which the draft Direction on the

² The CE's Report lists the OPW submission under MA 38 only. However, the OPW submission relates to both MA 38 and MA 41.

Variation of the County Development Plan relate and therefore the Office has considered them here:

Submissions to OPR		
Draft Direction	Support (Cllr. Name)	Oppose (Cllr. Name)
Part 2 (a) (i)	-	-
Part 2 (a) (ii)	-	-
Part 2 (a) (iii)	-	Cllr. Peter Stapleton Cllr. Stephen Stokes

3. Chief Executive's Recommendation

11. The CE's Report states that the Chief Executive has considered each of the submissions made through the statutory public consultation. The Chief Executive's recommendation with regard to each of the individual parts of the draft Direction is as follows:

Draft Direction	Chief Executive's Recommendation
Part 2(a)(i) (MA 20B)	Implement the draft direction with recommended consequent changes
Part 2(a)(ii) (MA 38)	Implement the draft direction with recommended consequent changes
Part 2(a)(iii) (MA 41)	Implement the draft direction

4. Consideration of Submissions

12. The matters raised in the CE's Report and submissions received directly from the elected members are given detailed consideration below.

4.1 Part 2(a) (i) MA 20B Lands at Gleneary Road, Rathnew

[1] Draft Direction

Part 2(a) (i) MA 20B - i.e. the subject lands revert to Open Space (OS1) from New Residential – Priority 2 (RN2).

[2] Chief Executive's Recommendation

The Chief Executive's recommendation is to implement the draft direction.

The Chief Executive identifies recommended consequent changes which are to:

- change the zoning of the lands from Open Space (OS1) to Natural Areas (OS2), as this was the subject of agreed MA 42 to the Local Area Plan; and
- amend the following in the written statement for SLO 3 – Milltown North
 - (a) SLO 3 text,
 - (b) SLO 3 map, and
 - (c) SLO 3 concept sketch.

[3] Prescribed Authorities

N/A

[4] Elected Members' submissions to the OPR and to the Planning Authority

The Office received no direct submissions from elected members of the Planning Authority during the statutory consultation period in respect of MA 20B.

One submission was received by the Planning Authority from an elected member (Councillor John Snell) opposing the draft Direction, in respect of MA 20B. The submission is included in the CE's Report, with relevant extracts from the minutes / transcripts of the Council meetings on 10th February 2025 and 12th May 2025.

The Office has summarised the matters raised in the submission to the Planning Authority as follows:

- request the minutes of the full Wicklow County Council meeting of the 10th February 2025 and 12th May 2025 which pertains to MA 20B be extracted and submitted by the officials where democratically elected members spoke at length on the reasons to support the zoning;
- availability of a parcel of land fully serviced in a current housing crisis will assist objectives to build more homes;
- the opportunity to remove a dangerous and unsightly road frontage to achieve commitments to a safer road network for pedestrian, cyclists and motorists;
- concurs with the 25m set back from streams as per the County Development Plan, with the site more in the region of a 35m set back;
- the land is also subject to the 100m buffer zone set back from the N11 motorway which restricts development further and a new link road from Rathnew North to the Glenealy Road is to pass through this land;
- flood risk should be addressed through the planning application stage and this area has not ever shown any flooding;
- conservation of wildlife will and can be demonstrated in the regular planning application stage as is normal;
- continued support for the local community and constituents to meet obligations to develop and grow our communities in a sensible and strategic way bearing in mind the environmental impact;
- two material contraventions to the County Development Plan have been approved since the making of the LAP providing 150 units, and one involved rezoning a site from RN2 to RN1 and industrial close to MA 20B;
- this could be interpreted as a highly undemocratic and unjust development by the Minister as there appears to be a genuine absence of objectivity and impartiality in respect of these lands. Council Members have already approved the retention of RN1 residential land on two separate occasions, and this zoning has already been adopted as part of the Local Area Plan; and
- a Ministerial Direction is being put forward in direct opposition to MA 20B. The justifications for this centre around the removal of vegetation and flood risks (for a

site which has never flooded) and hypothetical ecological risks, none of which are supported by expert, detailed, site-specific evidence.

[5] Submissions by members of the public to the Planning Authority

One submission, including a Natura Impact Statement (NIS), was received from Mary Byrne opposing the draft Direction in respect of MA 20B. The submission, excluding the NIS, is included in the CE's Report, and is summarised by the Office as follows:

- as landowner of the subject lands which have been zoned since 2013 considerable funds have been spent applying for planning permission which has included commissioning reports on nature based SUDS, archaeology report, NIS, water services report, landscape design report, tree survey report, road safety report, and DMURS compatibility assessment report;
- fundamental flaws in the first application included the design of the foul sewer network on site;
- a second application lodged in May 2025 addressed the issues identified in the previous refusal and the overall design was developed with the preparation of the NIS and the requirements of the consultant ecologist were fully incorporated in the design, and in particular in the mitigation methods and the phasing of the works that have as the principle parameter the protection of the stream that feeds into the Special Area of Conservation (SAC);
- the LAP was adopted a few days before the application was decided, and so it fell on the basis that these lands cannot be given permission until new population figures in the Revised NPF work their way through the RSES and County Development Plan.
- details of an individual planning application are not fully relevant to how land is selected to be zoned, but nor should land be zoned on the basis, as given in the draft Direction, that '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 Wetlands SAC';
- development plans do not require every field to be analysed and assessed under each planning or environmental parameter. A plan should use common sense and

obviously reject land for zoning that would clearly undermine a sensitive site or landscape. In other lands it is usual to designate land for particular purposes, but qualify such zoning with strict policies requiring evidence to be supplied at the planning application stage;

- the Planning Authority required a NIS be prepared as part of its assessment of the application. There was a thorough environmental inventory done of the site, as well as considerable desktop study. The NIS was positive about the ability of the site to sustain development without adversely impacting on the European Sites in The Murrough;
- a complete, precise and definitive finding and conclusion has been reached that there would not be adverse effects on European sites;
- where there is inconclusive doubt, then the rational and normal approach is to have strong policies and requirements in the development plan for an applicant to demonstrate that there will be no adverse impacts. Development Plans are not uni-polar, and have to provide for development to support the community while having strong protection for the environment;
- the vast majority of the particular parcel of land is not sensitive and is well elevated over the stream, and for most of the site the development would be within the constrained area as per the draft Direction. The portion of land to the east that was previously zoned and is proposed to be removed, is for the most part well elevated over the stream, and generally 25m from the watercourse; and
- the NIS states 'It is the conclusion of this Natura Impact Statement that, subject to mitigation measures, there would be no potential for an adverse effect on European sites as a result of the proposed development and mitigation measures to be implemented. This conclusion refers to the development by itself or in combination with other developments.'

[6] Reasons for opposing the draft Direction

The reasons given for opposing the draft Direction can be summarised as follows:

- housing crisis highlights the need to zone land for more homes;
- a dangerous and unsightly road frontage needs to be removed;

- the subject lands are outside the 25m setback, and are essentially 35m from the stream;
- subject lands are affected by a 100m buffer zone from the N11 and future road requirements through the site;
- flood risk and ecology issues can be addressed at the planning application stage;
- development plans do not require every field to be analysed and assessed under each planning or environmental parameter;
- the NIS concludes that subject to mitigation measures, there would be no potential for an adverse effect on European sites as a result of the proposed development and mitigation measures to be implemented; and
- undemocratic and unjust development by the Minister with a genuine absence of objectivity and impartiality in respect of these lands.

[7] Consideration of reasons

A number of the reasons given for opposing the draft Direction are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Variation, and were detailed in the notice under section 31AM(6) of the Act to the Office on 15th May 2025 (31AM(6) notice) received from the Planning Authority including:

- 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.

As set out in the letter that issued to your office on 6th June 2025 further to section 31AM(8) of the Act (31AM(8) notice letter), these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to those similar points raised again in submissions.

The Office has considered the additional or more detailed reasons raised below.

In relation to the argument that the housing crisis highlights the need to zone more land for homes, and that a dangerous and unsightly road frontage needs to be removed, the Office notes that the vast majority of this land parcel was zoned New Residential – Priority 2 (RN2) at the proposed Variation stage. This zoning excluded those smaller areas of land to the north and east closest to the Rathnew Stream, which were zoned Open Space (OS1).

The Chief Executive’s response to the proposed material alteration to include these lands in the wider RN2 zoning (CE’s report MA stage) states that the RN2 zoning would conflict with the protection of the riverine environment and the protection of mature vegetation. The Office raised no objection to the residential zoning objective on the majority of the lands (as per the proposed Variation) but concurs with the conclusions reached by the Chief Executive regarding the smaller area of land closest to the banks of the watercourse.

The Office does not therefore consider that the points raised provide a reasonable basis for rezoning the lands from Open Space (OS2) to New Residential – Priority 2 (RN2), which is inconsistent with NPO 85 of the National Planning Framework First Revision (2025) (the 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.

In relation to the points regarding flood risk management and the risk of adverse effects on the integrity of The Murrough SPA and The Murrough Wetlands SAC, these matters were not raised by the Office in making a recommendation to you to issue a draft Direction in relation to MA 20B. These reasons were also not included in your Statement of Reasons set out in the draft Direction in relation to MA 20B³.

In relation to the point that development plans do not require every field to be analysed and

³ In the interests of clarity, the text quoted in the submissions relating “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 Wetlands SAC” is an extract from the Statement of Reasons in your draft Direction in relation to MA 41 (below) and is not relevant to MA 20B. Similarly, the Statement of Reasons refers to flood risk in relation to MA 38 and MA 41, and not MA 20B.

assessed under each planning or environmental parameter, the Office accepts that a reasonable and proportionate approach is required in this respect. However, as set out in the 31AM(8) notice letter, the Office's opinion on this matter was informed by the submission of the Department of Housing, Local Government and Heritage, Development Applications Unit (NPWS) (MA stage) 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 MA 20B part of the wider land parcel comprises, in part or in whole, a sensitive riverine environment, and the exclusion of this part of the wider land bank from the RN2 zoning objective to protect this environment is necessary to ensure consistency with NPO 85. Furthermore, MA 20B was, together with MA 38 and MA 41, one of a number of material alterations which contravened the objectives of the NPF to protect biodiversity and ecologically sensitive environments and therefore particularly when considered together these material alterations failed to set out an overall strategy for the proper planning and sustainable development of the area.

The Office also notes the points raised in the submissions relating to the Natura Impact Statement submitted with the planning application currently before the planning authority⁴. However, the Appropriate Assessment process, including the preparation of an NIS, deals specifically with potential effects from a specific development on European sites, in this case The Murrough SPA and The Murrough Wetlands SAC, which is a separate matter to the reasons specified in the draft Direction as applying to MA 20B, i.e. that the Variation includes material alterations to zone land for residential development in areas of environmental and biodiversity sensitivity (MA 20B), inconsistent with NPO 85 of the NPF.

The NIS assesses the potential effects on European sites, in this case The Murrough SPA and The Murrough Wetlands SAC, from a specific development rather than the wider

⁴ This planning application (planning reference 2560341, submitted 7th May 2025) for the construction of 61 dwellings, new entrance to public road, connection to all services and associated works including roads, footpaths, boundaries, boundary treatments, open spaces, landscaping, and attenuation areas is due to be decided by the Planning Authority by 31st December 2025. The extension of time to determine the application was agreed at the request of the applicant. Nine of the 61 residential units at the eastern extent of the site are located within the lands that are subject to MA 20B.

objective of the NPF (NPO 85) 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.

Therefore, the Office does not consider that the conclusion of the NIS prepared as part of the planning application (planning reference 2560341) in respect of the potential effects on European sites provides a reasonable basis for the rezoning of the MA 20B lands from Open Space (OS2)⁵ to New Residential - Priority 2 (RN2).

The submissions also argue that ecological risks can be dealt with at the planning application stage. However, that does not mean that the retention of existing habitats and integration of policies and objectives for the protection and restoration of biodiversity, including the first principle of the mitigation hierarchy to avoid potential biodiversity impacts, should be ignored at the plan level. The Office is of the view that this zoning, together with the zoning proposed under MA 38 and MA 41, is not consistent with a strategy for the proper planning and sustainable development of the area when it is inconsistent with NPO 85 of the NPF, and is therefore contrary to section 13(7) of the Act which restricts considerations in making a variation to the proper planning and sustainable development of the area, the statutory obligations of the Planning Authority and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

In relation to the reasons that the draft Direction is unjust and undemocratic, the Office is satisfied that the relevant statutory provisions have been fully adhered to in this regard.

[8] Conclusion

The Office also notes the Chief Executive's recommendation to implement the draft

⁵ The subject lands are marked solid green indicating OS1 on Map 1 Land Use Zoning Objectives and the Map of SLO3 of the proposed Variation. However, the text of the proposed Variation states that the 'SO comprises Employment (E), New Residential (RN -Priority 2) and **Natural Areas (OS2) zonings**'. The introductory text to the proposed Variation makes it clear at 1.2 that where there is any discrepancy between the text and the maps the text shall take precedence. For the purposes of this assessment, it is accepted that the lands were zoned OS2 in the proposed Variation.

Direction.

The Chief Executive's recommendation identifies a number of consequential changes, including to change the zoning of lands that are the subject of MA 20B to Natural Areas (OS2) instead of Open Space (OS1) as set out in the draft Direction. The agreed MA 42 only applied to lands in the draft Local Area Plan that were zoned OS1 at MA stage. The Office is of the view that in making the proposed Direction the lands the subject matter of MA 20B should revert to what was indicated in the proposed Variation prior to the Material Alteration Stage. It is apparent looking at Map 1 Land Use Zoning Objectives of both the draft Variation and the draft Local Area Plan, and the Map of SLO3 of the draft Local Area Plan that the subject lands are marked solid green indicating OS1, however, the text of the draft Local Area Plan states that the 'SO comprises Employment (E), New Residential (RN -Priority 2) and **Natural Areas (OS2) zonings**'. The introductory text to the draft Local Area Plan makes it clear at 1.2 that where there is any discrepancy between the text and the maps the text shall take precedence. Proposed Material Alteration No. 2 to the Variation No. 2 of the County Development Plan relates to the land use zoning changes proposed to the draft Local Area Plan, therefore the same circumstances apply with respect to the discrepancies between the draft Local Area Plan map and text. Therefore, the Office is of the view that the Chief Executive is correct that the zoning of the lands the subject of MA 20B should revert to Natural Areas (i.e. OS2).

The remaining consequent changes to the Specific Local Objective (SLO 3) for the Miltown North Area are not relevant to the Variation, as they pertain to matters only included in the LAP.

Following consideration of the CE's Report and submissions made, and for the reasons outlined above, the Office recommends a minor amendment to the final Direction so that the lands revert to Open Space (OS2), as per the draft Local Area Plan, but is of the view that there is no planning or policy basis to otherwise amend the recommendation of this Office in respect of the draft Direction in relation to MA 20B Lands at Glenealy Road, Rathnew.

4.2 Part 2(a) (ii) MA 38 Lands at Charvey Court, Rathnew

[1] Draft Direction

Part 2(a) (ii) MA 38 - i.e. the subject lands revert to Open Space (OS1) from New Residential – Priority 1 (RN1).

[2] Chief Executive's Recommendation

The Chief Executive's recommendation is to implement the draft direction.

The Chief Executive identifies a recommended consequent change which is to:

- change the zoning of the lands from Open Space (OS1) to Natural Areas (OS2), as this was the subject of agreed MA 42 to the Local Area Plan.

[3] Prescribed Authorities

Office of Public Works (OPW)

The CE's Report includes the Office of Public Works (OPW) submission, in its entirety, supporting the draft Direction in relation to MA 38. The Office has summarised the matters raised in the submission to the Planning Authority as follows:

- confirm that issues highlighted in the draft Direction with regard to flood risk management are consistent with the commentary contained within the OPW submission on the material alterations to the Local Area Plan consultation namely:
 - the lands overlap with Flood Zone A and B, have not satisfied multiple criteria of the Justification Tests and the zonings are noted as not appropriate;
 - the rezoning of these lands are contrary to the Guidelines and are not recommended by the SFRA; and
 - reinstating the Natural Areas (OS2) zonings or rezoning as another water compatible type zoning.

[4] Elected Members' submissions to the OPR and to the Planning Authority

The Office received no direct submissions from elected members of the Planning Authority during the statutory consultation period in respect of MA 38.

Two submissions were received from the following elected members to the Planning Authority opposing the draft Direction:

- Councillor John Snell
- Councillor Joe Behan

The submissions are included in the CE's Report, with relevant extracts from the minutes / transcripts of the Council meetings on 10th February 2025 and 12th May 2025.

The Office has summarised the matters raised in the submission to the Planning Authority as follows:

- request the minutes of the full Wicklow County Council meeting of the 10th February 2025 and 12th May 2025 which pertains to MA 38 be extracted and submitted by the officials where democratically elected members spoke at length on the reasons to support the zoning;
- there is a housing crisis and having the availability of a small parcel of land in a current housing estate will assist the objectives to building more homes and remove an unsightly area that could be the subject of anti-social behaviour;
- no flooding has ever been witnessed in this area;
- a local authority owned residential zoned site in Ashford has experienced flooding and no concerns have been raised in relation to that, decision making needs to be fair and balanced;
- the flood risk assessment should be dealt with at planning application stage;
- continued support for the family-run business which has provided a home for other residents and employment at the time of construction;
- voluntary groups are working hard to maintain the landscape;
- the development of infill sites should be explored and since the making of the LAP two material contraventions to the County Development Plan have been approved which combined will provide 150 residential units, MA 38 would realise three units;
- this could be interpreted as a highly undemocratic and unjust development by the Minister as there appears to be a genuine absence of objectivity and impartiality in respect of these lands. Council Members have already approved the retention RN1 residential land on two separate occasions, and this zoning has already been adopted as part of the LAP;

- a Ministerial Direction is being put forward in direct opposition to our approval of MA 38. The justifications for this centre around the removal of vegetation and flood risks (for a site which has never flooded) and hypothetical ecological risks, none of which are supported by expert, detailed, site-specific evidence;
- if the site remains vacant it will continue to be a nuisance from a residential amenity perspective; and
- it is amazing and incomprehensible that a small infill site has come to the attention of the Minister and Regulator and illustrates why the housing shortage will not be resolved anytime soon.

[5] Submissions by members of the public to the Planning Authority

One submission was received from Paul Walsh opposing the draft Direction in respect of MA 38. The submission is included in its entirety in the CE's Report, and is summarised by the Office as follows:

- the submission is made by the landowner of the subject lands;
- development plan zoning should not be proposed to achieve single aims, or indeed a couple of aims as in this proposed Direction to the exclusion of other impacts including the residential amenity of existing residents;
- permission had been granted long before national guidance on development and flood risk and the sub-site had permission as part of the overall Charvey Court development;
- there was no history of flooding, and the Planning Authority had a good history of avoiding granting residential development on sites that later became flooded, based on local knowledge and the ability of the Council's engineers to read the land;
- when the OPW funded the study of watercourses in this general area for the early CFRAM process, it was not due to any history of flooding in this area or this stream;
- early CFRAM maps showed flooding of the first 3m to 5m of the rear gardens but did not extend to the dwelling houses;
- the 2013 LAP zoned the lands as open space with the intention of leaving the land fallow, however it prevented any development being investigated on the site

including preventing detailed flood modelling of the watercourse;

- detailed flood modelling was undertaken for a site upstream of the tributary similarly affected by OPW flood modelling which proved that the site was not affected and planning permission was granted;
- the material amendment allows for an applicant to undertake site specific flood modelling to determine if housing is possible on the site and in accordance with proper planning;
- only for the 2008 banking crisis houses would have been completed on the site and as unaffected by flooding as other houses built there;
- allowing the residential zoning would not affect flood risk and the effect of the draft Direction is bad planning;
- it is likely the current use of the site as a builders yard will continue if the site is zoned open space, as the non-conforming use is statute barred from enforcement as it has been in place for 20 years and will have the same impact on the SPA and SAC as the proposed residential use, which a normal NIS would identify as a risk;
- development control is the stage to assess a development on a small site in the middle of residential existing development, not a crude instrument like a development plan where no in depth studies has been carried out and the unintended result will be that such studies can never be carried out;
- it is not correct that the Council did not take on board the recommendations of the Office, as the elected members were aware of the objectives of the Office's recommendations and were also aware of the effects of such recommendations on the existing residential amenities of Charvey Court residents, and the remedies of the planning permission process together with all the supporting policies in the plan and
- given the urgency for more housing, if hydrological modelling demonstrates that the site is suitable, housing can be developed without delay as site infrastructure is in place and the draft Direction would prevent the possibility of achieving this.

[6] Reasons for opposing the draft Direction

The reasons given for opposing the draft Direction can be summarised as follows:

- housing crisis and urgency for more housing;
- development of infill sites should be explored;
- residential amenity of existing residents;
- no history of flooding on the site;
- inappropriateness of development plan process to zone land on the basis of site specific issues that could be dealt with at the planning application stage;
- undemocratic and unjust development by the Minister with a genuine absence of objectivity and impartiality in respect of the lands;
- justification for flood and ecological risks are not supported by expert, detailed, site-specific evidence;
- permission granted for wider Charvey Court development prior to national guidance on development and flood risk;
- continued use of the site as a builders yard; and
- incorrect that the elected members did not take on board the Office's recommendations.

[7] Reasons for supporting the draft Direction

The reasons given for supporting the draft Direction can be summarised as follows:

- the lands overlap with Flood Zone A and B, have not satisfied multiple criteria of the Justification Tests and the zonings are noted as not appropriate; and
- the rezoning of these lands is contrary to the Guidelines and is not recommended by the SFRA.

[8] Consideration of reasons

A number of the reasons given for opposing the draft Direction are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Variation, and were detailed in the 31AM(6) notice received from the Planning Authority including:

- 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.

As set out in the section 31AM(8) notice letter to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your functions under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to those similar points raised again in submissions.

The Office has considered the additional or more detailed reasons raised below.

In relation to the housing crisis and urgency for more housing, the Office acknowledges the concern raised but does not consider that it provides a reasonable basis for the rezoning of the lands for New Residential – Priority 1 (RN1) having regard to the objectives of the NPF and the RSES to avoid development in areas at risk of flooding and 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.

In relation to the planning history of these lands, the Office is of the view that any historical development of the wider area and/or decisions of the Planning Authority in granting planning permission for the Charvey Court housing development predates the current planning policy context and does not provide a justification for the rezoning of this site which would be inconsistent with national and regional policy objectives in relation to flood risk and the protection and restoration of biodiversity as set out in the 31AM(8) notice letter. Further, sections 10(8) and 19(6) of the Act provides that there is no presumption in law that any land zoned in a particular development plan or local area plan shall remain so zoned in any subsequent plan.

In relation to the point that there is no history of flooding on the site, the Office is satisfied that the SFRA prepared to inform the Local Area Plan preparation process is based on appropriate flooding datasets including countywide flood zone mapping and Catchment Flood Risk Assessment and Management (CFRAM) mapping. The submissions that there is no history of flooding on the site do not negate the flood risk evidence presented as part

of the SFRA and the resultant flood risks identified in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines).

Matters relating to flood risk management were carefully taken into consideration by the Office in recommending the exercise of your functions under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to this similar issue now raised in the submission.

In relation to the point that the justification for flood risk is not supported by expert, detailed and site-specific evidence, the Office's opinion on this matter was informed by both the Planning Authority's own SFRA, and the submission of the OPW. The OPW also reiterated its conclusions in its support for the draft Direction. The Office also notes that the Environmental Report prepared as part of the SEA by the Planning Authority also identified potential significant adverse effects on residents and people affected by any flood event and buildings and other material assets. Furthermore, the SFRA was prepared in accordance with the Flood Guidelines which sets out the requirements for justification tests to be prepared at the plan making stage, and there is no evidence presented to support a conclusion that the SFRA Plan Making Justification Test (Justification Test), which the subject lands failed, was flawed or was not sufficiently detailed in this respect. The Office therefore does not accept that its conclusion was not supported by expert evidence, or the appropriate level of detailed and site-specific evidence.

In the Office's opinion, the inconsistency with NPO 78 of the NPF and RPO 7.12 of the RSES on its own is sufficient to conclude that the development plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area concerned. Notwithstanding this, the Office considers that the additional matters set out in the 31AM(8) notice letter are also a sufficient basis to conclude as such.

In relation to the point that the ecological risks highlighted are not supported by expert, detailed and site specific evidence, the Office's opinion on this matter was informed by the submission of the Department of Housing, Local Government and Heritage, Development Applications Unit (NPWS) that the site is located within a core 25m buffer zone that should be kept as a riparian corridor consistent with Objective CPO 17.26 of the County Development Plan. The CE's Report (MA stage) also confirmed that the lands are within

25m of the river and should be appropriately zoned for open space uses.

The submissions have presented no evidence that the zoning objective is consistent with NPO 85 of the NPF which 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.

Furthermore, MA 38 was, together with MA 20B and MA 41, one of a number of material alterations which contravened the objectives of the National Planning Framework to protect biodiversity and therefore particularly when considered together these material alterations failed to set out an overall strategy for the proper planning and sustainable development of the area.

The submissions also argue that flood and ecological risks can be dealt with at the planning application stage. However, that does not mean that flood risk management and/ or the conservation, enhancement, mitigation and restoration of biodiversity, 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, should be ignored at the plan level. The Office is of the view that this zoning is not consistent with the stated objectives of the NPF and the RSES, and is therefore contrary to section 13(7) of the Act which restricts considerations in making a variation to the proper planning and sustainable development of the area, the statutory obligations of the Planning Authority and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

In relation to the point that the existing unauthorised use of the site as a builders' yard will continue if the site is zoned Open Space (OS2)⁶, the Office notes that the site is currently

⁶ The subject lands are marked solid green indicating OS1 on Map 1 Land Use Zoning Objectives and the Map of SLO3 of the proposed Variation. However, the text of the proposed Variation states that the 'SO comprises Employment (E), New Residential (RN -Priority 2) and **Natural Areas (OS2) zonings**'. The introductory text to the proposed Variation makes it clear at 1.2 that where there is any

vacant with no builders' yard in operation. Any re-establishment of a previous unauthorised use on the site will be subject to planning enforcement proceedings in accordance with the Planning and Development Act 2000, as amended, and / or the Planning and Development Act 2024.

In relation to the reasons that the draft Direction is unjust and undemocratic and that it is not correct that the Planning Authority did not take on board the recommendations of the Office, the Office is satisfied that the relevant statutory provisions have been fully adhered to in this regard.

[9] **Conclusion**

The Office also notes the Chief Executive's recommendation to implement the draft Direction.

The Chief Executive's recommendation identifies a number of consequential changes, including to change the zoning of lands that are the subject of MA 38 to Natural Areas (OS2) instead of Open Space (OS1) as set out in the draft Direction. The agreed MA 42 only applied to lands in the draft Local Area Plan that were zoned OS1 at the MA stage. The Office is of the view that in making the proposed Direction the lands the subject matter of MA 38 should revert to what was indicated in the proposed Variation prior to the MA Stage. It is apparent looking at Map 1 Land Use Zoning Objectives of both the draft Variation and the draft Local Area Plan, and the Map of SLO3 of the draft Local Area Plan, that the subject lands are marked solid green indicating OS1, however, the text of the draft LAP states that the 'SO comprises Employment (E), New Residential (RN -Priority 2) and **Natural Areas (OS2) zonings**'. The introductory text to the draft Local Area Plan makes it clear at 1.2 that where there is any discrepancy between the text and the maps the text shall take precedence. Proposed Material Alteration No. 2 to the Variation No. 2 of the CDP relates to the land use zoning changes proposed to the draft Local Area Plan, therefore the

discrepancy between the text and the maps the text shall take precedence. For the purposes of this assessment, it is accepted that the lands were zoned OS2 in the proposed Variation.

same circumstances apply with respect to the discrepancies between the draft Local Area Plan map and text. Therefore, the Office is of the view that the Chief Executive is correct that the zoning of the lands the subject of MA 38 should revert to Natural Areas (i.e. OS2).

The remaining consequent changes to the Specific Local Objective (SLO 3) for the Miltown North Area are not relevant to the Variation, as they pertain to matters only included in the LAP.

Following consideration of the CE's Report and submissions made, and for the reasons outlined above, the Office recommends a minor amendment to the final Direction so that the lands revert to Open Space (OS2), as per the draft Local Area Plan, but is of the view that there is no planning or policy basis to otherwise amend the recommendation of this Office in respect of the draft Direction in relation to MA 38 Lands at Charvey Court, Rathnew.

4.3 Part 2(a) (iii) MA 41 Lands at The Murrough, Wicklow Town

[1] Draft Direction

Part 2(a) (iii) MA 41 - i.e. the subject lands revert to Natural Area (OS2) from Employment (E).

[2] Chief Executive's Recommendation

The Chief Executive's recommendation is to implement the draft direction.

[3] Prescribed Authorities

Office of Public Works (OPW)

The CE's report includes the OPW submission, in its entirety, in relation to MA 38 only. However, the Office notes that the submission also supports the draft Direction in relation to MA 41. The Office has summarised the matters raised in the submission to the Planning Authority as follows:

- confirm that issues highlighted in the draft direction with regard to flood risk management are consistent with the commentary contained within the OPW submission on the material alterations to the draft Local Area Plan consultation

namely:

- the lands overlap with Flood Zone A and B, have not satisfied multiple criteria of the Justification Tests and the zonings are noted as not appropriate
- the rezoning of these lands are contrary to the Guidelines and are not recommended by the SFRA; and
- reinstating the OS2 Natural Areas zoning or rezoning as another water compatible type zoning.

[4] Elected Members' submissions to the OPR and to the Planning Authority

The Office received two direct submissions from the following elected members of the Planning Authority during the statutory consultation period opposing the draft Direction, in respect of MA 41:

- Councillor Peter Stapleton
- Councillor Stephen Stokes

Four submissions were received from the following elected members to the Planning Authority opposing the draft Direction:

- Councillor John Snell
- Councillor Joe Behan
- Councillor Peter Stapleton
- Councillor Stephen Stokes

The submissions are included in the CE's Report, with relevant extracts from the minutes / transcripts of the Council meetings on 10th February 2025 and 12th May 2025, as requested by Councillor John Snell.

The Office has summarised the matters raised in the submissions to the OPR and Planning Authority as follows:

- request the minutes of the full Wicklow County Council meeting of the 10th February 2025 and 12th May 2025 which pertains to MA 20B be extracted and submitted by

the officials where democratically elected members spoke at length on the reasons to support the zoning;

- council members' democratic decision to approve MA 41 reflects the site's vital and strategic role in national housing delivery, it's significant contribution to the local and national economy, and its crucial role in supporting Wicklow Port;
- the site's flood-free history, low-impact use without adverse ecological effects, and the 1.8 ha Natural Areas (OS2) buffer zone, which the landowner has already provided as part of the LAP process, negate any proposed rezoning argument;
- restricting this facility and its ability to meet the needs of the market will result in delays to new home construction and increased procurement costs for timber products nationally;
- terminating 2.8 hectares of employment zoned land in the plan, would reduce the already limited employment zoned land available;
- rezoning this 1 ha site seems unjust, particularly given the 1.8 ha sacrifice already made;
- request the minutes of the full Wicklow County Council meeting of the 10th February 2025 and 12th May 2025 which pertains to MA 41 be extracted and submitted by the officials where democratically elected members spoke at length on the reasons to support the zoning;
- there is housing crisis and having the availability of 1 ha of land to store bales of timber from EU countries is needed to support house building;
- the planning application stage is the appropriate stage to undertake a site specific flood risk assessment;
- continued support for the family run business which provides employment for generations;
- the conservation of the area is supported by the owner and majority of the elected members by retaining a buffer zone of 1.8 ha of Natural Areas (OS2);
- this could be interpreted as a highly undemocratic and unjust development by the

Minister as there appears to be a genuine absence of objectivity and impartiality in respect of these lands. Council Members have already approved the retention of 1 ha of employment land on two separate occasions, and this zoning has already been adopted as part of the LAP; and

- a Ministerial Direction is being put forward in direct opposition to our approval of MA 41. The justifications for this centre around flood risks (for a site which has never flooded) and hypothetical ecological risks, none of which are supported by expert, detailed, site-specific evidence.

[5] Submissions by members of the public to the Planning Authority

Two submissions were received opposing the draft Direction in respect of MA 38 from:

- R.F. Conway & Company Ltd.
- Conway Roadfreight Ltd.

The submissions are included in their entirety in the CE's Report, and are summarised by the Office as follows:

- there is no history of flooding of the site and disregarding the factual historic evidence could undermine proper planning and sustainable development as required by the Act;
- the Justification Test in Addendum I to the Strategic Flood Risk Assessment of the draft LAP is flawed, the conclusions in relation to MA 41 are disputed as the land is previously developed and under-utilised, near the urban core, and no alternative sites meet operational needs and the persons who authored the Justification Test are not familiar with the land or its uses;
- the land is to be used exclusively for the temporary, low-impact storage of imported timber packs required by Ireland's construction industry which includes the absence of permanent structures, the nature of the activity is easily reversible, the land remains intact and recoverable, and there are no emissions, waste or water emissions;
- the activity poses no ecological risk and aligns with NPF objectives specifically NPO

3a, which supports compact and sustainable urban growth, and NPO 13, which promotes land use that balances environmental, social, and economic needs;

- lands host an active treatment plant granted planning permission, subject to EPA licensing and supervision and which has operated successfully for over twenty years with no difficulty presented during that period;
- the timber storage operation, which takes place a considerable distance from the Murrough SPA/SAC protected areas, involves no discharges or construction, and does not pose any credible threat to the integrity of these areas;
- 1.8 ha buffer zone of Natural Areas (OS2), could be designed with suitable ecological safeguards (such as native planting), further ensures no adverse impact on the Murrough SPA/SAC;
- the CAAS Strategic Environmental Assessment (SEA) undertaken as part of the LAP process confirms that the 1 ha, retained as employment zoning, has the lowest environmental sensitivity;
- to remove employment zoning based on theoretical risks, without the backing of proper, detailed, site-specific evidence, constitutes a flawed and unjustified approach under both national and EU law;
- the timber stored is a critical resource for Ireland's construction sector, particularly in support of the Housing for All initiative and the increasing demand for sustainable, timber-frame housing;
- the land serves as a key logistics and storage hub which facilitates the delivery of timber essential to new housing, affordable and carbon conscious timber frame homes and sustainable and climate friendly building practices;
- removing the employment zoning will conflict with NPO 35 of the NPF which supports infrastructure and employment opportunities through site-based regeneration and development to facilitate housing and economic growth;
- recent actions by Minister Browne TD to deliver new simplified and standardised social housing, explicit emphasis in the use of Modern Methods of Construction and

reductions in private open space standards for apartment development support the strategic role of the land is national housing delivery;

- the site is essential to the continued operation and success of Wicklow Port, which directly / indirectly supports hundreds of Irish jobs, given the significant public investment in the Port Access Road the draft Direction will negatively impact on the local and regional economy and be inconsistent with section 66 of the Local Government Act 2001, which promotes local economic development and the effective use of infrastructure to support job creation;
- multiple timber shipments in Q1 and Q2 2025 into Wicklow Port were deferred due to the absence of space at the Murrough North facilities and given the high demand ample storage space and bespoke infrastructure is required;
- a buffer zone of 1.8 ha of Natural Areas (OS2) is provided between the storage site and ecological area which was a significant concession, made in good faith as part of the draft LAP preparation process, exceeds the mitigation requirements for more intensive land uses and aligns with section 19 of the Planning and Development Act 2000 and the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018, which promote the integration of environmental safeguards into planning proposals;
- developments in the vicinity have addressed potential environmental concerns through the standard planning process and the same approach should be applied to the subject lands;
- the selective dezoning of the subject lands is inconsistent and inequitable, undermining the procedural fairness and public consultation requirements of section 19 of the Planning and Development Act 2000 (as amended) for Local Area Plan processes which requires that zoning decisions in Local Area Plans be evidence-based and consistent with national, regional, and local objectives;
- there is an absence of proper site-specific, scientific evidence which credibly substantiates the claims of flood or ecological risk as Addendum I to the AA NIR for the draft LAP does not present any compelling evidence and the advised solution to modify MA 41 to address concerns identified in the report were approved and

included in the adopted LAP;

- elected members overwhelmingly supported MA 41 and the democratic votes of the February and May 2025 Council meetings should be defended by the Chief Executive;
- rezoning of the site from Employment to Natural Areas (OS2) disproportionately restricts property rights under Article 1, Protocol 1 of the European Convention on Human Rights (incorporated into Irish law by the European Convention on Human Rights Act 2003) and Article 43 of the Irish Constitution, limiting the economic use of the land, critical for operating Ireland's largest timber distribution facility, without site-specific evidence of flood or ecological harm to justify such a severe measure;
- no direct contact made to visit the lands to undertake ecological or flood risk studies and a significantly more robust process should have been undertaken to determine the land use zoning; and
- genuine absence of objectivity and impartiality in respect of the lands and it is conceivable that the decision to zone the lands was made prior to the LAP preparation process and that all documents and reports prepared to support the LAP preparation process have been designed to retrospectively justify the decision.

The Conway Roadfreight Ltd submission sets out its operation and that 95% of its revenues are generated through activities originating from the facility. It objects to the draft Direction and suggests that the evidence relied upon by the Minister lacks adequate, robust, site-specific ecological and flood risk assessments, and in some cases the underlying data is not accurate. It states that it is not aware of any visit by any person to undertake any form of ecological or flood-risk study on the site on the Minister's behalf. It poses a series of 23 detailed questions to the Minister, and the main issues that they raise can be summarised as follows under the following main headings:

- **SFRA** - the SFRA treats the Wastewater Treatment Plant differently despite the subject lands being significantly closer to the "core of an established or designated urban settlement". Also questions whether the SFRA include any site-specific assessment, or were any site-specific flood hazard and risk maps developed, or were local drainage patterns and watercourse capacities analysed, or was an in-

person survey of the site undertaken, or were local watercourse conditions inspected, or is there any evidence of actual flooding events on the site.

- **SEA** – the site is classified as having the lowest environmental sensitivity in the Environmental Sensitivity mapping contained in the SEA. Questions whether there was a site-specific baseline assessment or a site-specific assessment of likely significant effects on the landscape, or whether mitigation measures were proposed, or whether an in-person baseline survey was carried out, whether the environmental characteristics of the site was physically surveyed to inform mitigation.
- **AA** – questions whether a site-specific screening for Appropriate Assessment has been completed, or site-specific pathways of impact, or whether a site-specific evaluation of in-combination effects of other plans or projects was carried out, or were site-specific conservation objectives for any impacted Natura 2000 sites considered, or was a site-specific survey or field assessment carried out where existing data was inadequate, or were field observations made on-site to assess species or habitat conditions.
- **Other Considerations** - the facility is crucial to the Irish Construction Industry, it is at capacity and needs to expand, the site is a rugged area of grass and stony land with no visible signs of any wildlife or habitats, and any decision to reverse the zoning of MA 41 should be supported by robust, site- specific evidence rather than non-site-specific data related to the surrounding locale.

[6] Reasons for opposing the draft Direction

The reasons given for opposing the draft Direction can be summarised as follows:

- vital and strategic role in national housing delivery, significant contribution to the local and national economy, and crucial role in supporting Wicklow Port.;the site's flood-free history;
- low-impact timber storage use without adverse ecological effects;
- 1.8 ha Natural Areas (OS2) buffer zone is included in the adopted Local Area Plan

and could be designed with suitable ecological safeguards (such as native planting);

- delays to new home construction and increased procurement costs for timber products nationally;
- delays to timber shipments demonstrate ample storage space and bespoke infrastructure is required;
- limited employment zoned land available;
- undemocratic and unjust development by the Minister with an absence of objectivity and impartiality in respect of the lands;
- flood risks and hypothetical ecological risks, are not supported by expert, detailed, site-specific evidence;
- the Justification Test in the SFRA is flawed;
- employment zoning aligns with NPF objectives (NPO 3a, NPO 13 and NPO 35);
- treatment plant granted planning permission, subject to EPA licensing and supervision is operating successfully;
- the timber storage operation, takes place a considerable distance from the Murrough SPA/SAC protected areas;
- the SEA confirms the subject site of 1 ha has the lowest environmental sensitivity;
- potential environmental concerns should be addressed through the standard planning process;
- inconsistent and inequitable, undermining the procedural fairness and public consultation requirements of section 19 of the Planning and Development Act 2000 (as amended);
- lack of any compelling evidence in the NIR and the advised solution to modify MA 41 was approved and included in the adopted LAP;
- restriction of property rights under Human Rights legislation and the Irish Constitution, conflict with the Local Government Act 2001 and undermines the

procedural fairness and public consultation requirements of section 19 of the Planning and Development Act 2000; and

- questions whether the SFRA, SEA and AA prepared in accordance with legislative and policy requirements.

[7] Reasons for supporting the draft Direction

The reasons given for supporting the draft Direction can be summarised as follows:

- the lands overlap with Flood Zone A and B, have not satisfied multiple criteria of the Justification Tests and the zonings are noted as not appropriate and
- the rezoning of these lands is contrary to the Guidelines and is not recommended by the SFRA.

[8] Consideration of reasons

A number of the reasons given for opposing the draft Direction are similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Variation, and were detailed in the 31AM(6) notice received from the Planning Authority including:

- 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.

As set out in the section 31AM(8) notice letter to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to those similar points raised again in submissions.

The Office has considered the additional or more detailed reasons raised below.

In relation to the point that a 1.8 ha Natural Areas (OS2) buffer zone has been provided by the landowner at an alternative location on lands adjacent to the site that is subject to MA 41, the Office does not consider that this provides a reasonable basis to support MA 41 given the material alteration is not consistent with the objectives of the NPF and the RSES relating to flood risk management, the implementation of the Birds and Habitats Directives and alignment with development plans, and the environmental quality of the coastal resource.

In relation to the points that ample timber storage space is required to avoid delays and there is limited employment land available, the active timber storage operation operates successfully, subject to EPA licensing and supervision, and is located a considerable distance from The Murrough SPA / SAC, the Office does not consider that the reasons provide a sufficient basis to support MA 41 given the location of the site within Flood Zone A, the location within proximity of The Murrough SPA / SAC and in the absence of a complete, precise or definitive finding and conclusion, and where reasonable scientific doubt remains as to the adverse effects of Employment (E) zoning on the European sites in question.

In relation to the low impact of the timber storage use referenced in the submissions and which was the subject of a planning application withdrawn in January 2025, MA 41 relates

to zoning the lands Employment (E) the zoning objective for which includes a range of employment uses, rather than for a specific timber storage use. As such, the Office does not consider that the nature of the timber storage use provides a reasonable basis to support MA 41. In relation to the point that there is no history of flooding on the site and questions in respect of the flood mapping used, the Office notes that the Strategic Flood Risk Assessment sets out the extensive range of sources of information (section 2.4) which informed the assessment, and which was revised in the Addendum SFRA to include further mapping updates in response to the OPW's submission on the draft Local Area Plan, dated 11th November 2024. The Office is satisfied therefore that the SFRA prepared to inform the Local Area Plan preparation process is based on appropriate flooding datasets including countywide flood zone mapping, CFRAM mapping, and the National Coastal Flood Hazard Mapping (NCFHM) project which was completed in 2021, and does not accept that its conclusion was not supported by expert evidence, or the appropriate level of detailed and site-specific evidence.

Furthermore, the submissions that there is no history of flooding on the site do not negate the flood risk evidence presented as part of the SFRA, that the majority of the lands the subject of MA 41 are at high risk of present day flooding, and the entire site is within the OPW's future climate change scenarios areas at risk.

Matters relating to flood risk management were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to this similar issue now raised in the submission.

In relation to the point that the Justification Test in Addendum I to the SFRA is flawed and that the justification for flood risk is not supported by expert, detailed and site-specific evidence, the Office notes that the methodology followed in the SFRA is clearly set out in sections 2 and 3 of the SFRA (Appendix 4 to the draft Local Area Plan) and is consistent with the Flood Guidelines (including the staged approach to flood risk identification). Having carried out a Justification Test in accordance with the Flood Guidelines, the SFRA concludes that MA 41 fails to satisfy all of the point (2) criteria for the Justification Test set out in Box 4.1 of the Flood Guidelines and that the Justification Test was failed. The OPW's submission (MA stage) similarly states that MA 41 has not satisfied multiple criteria of the Justification Test and the Employment zoning is not appropriate. This conclusion was

reiterated in the OPW's submission in support of the draft Direction.

In relation to the points that flood risk can be managed locally through a planning application, a key message of the Flood Guidelines in relation to flooding and development management is that:

Most flood risk issues should be raised within strategic assessments undertaken by local authorities at the plan-making stage. Therefore, as more plans are reviewed and zoning reconsidered, there should be less need for development management processes to require detailed flood risk assessment⁷.

Furthermore, the first requirement of the Development Management Justification Test (Box 5.1) is that the lands have been zoned taking account of the Flood Guidelines – i.e. that the sequential approach has been followed and the Justification Test has been passed.

The Office does not therefore accept that the reason that flood risk can be managed locally through a planning application to be consistent with NPO 78 of the 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 the Office's opinion, the inconsistency with NPO 78 of the NPF and RPO 7.12 of the RSES on its own is sufficient to conclude that the development plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area concerned. Notwithstanding this, the Office considers that the additional matters set out in the 31AM(8) notice letter are also a sufficient basis to conclude as such.

The submissions also argue that ecological risks can be dealt with at the planning application stage. However, NPO 85 of the NPF requires the Integration of 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 NPO 52 of the NPF ensures that the coastal resource is managed to sustain its environmental quality. It should be noted that these provisions not only relate to biodiversity at a site level, but also the potential for impacts on

⁷ The Flood Guidelines, p.43.

adjoining areas such as the Broad Lough, as is the case in respect of MA 41. The Office is of the view that this zoning, together with the zoning proposed under MA 20B and MA 38, is not consistent with a strategy for the proper planning and sustainable development of the area when it is inconsistent with NPO 85 and NPO 52 of the NPF and therefore contrary to section 13(7) of the Act which restricts considerations in making a variation to the proper planning and sustainable development of the area, the statutory obligations of the Planning Authority and any relevant policies or objectives for the time being of the Government or any Minister of the Government.

As part of the plan making process, matters relating to ecological risk were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and the Office adopts the same rationale as set out in the 31AM(8) notice letter in response to this similar issue now raised in the submission. The submissions also argue that there is no compelling evidence in the NIR and that the advised solution to modify MA 41 was included in the adopted Variation. The Office considered this matter in recommending the exercise of your function under the relevant provisions of section 31 of the Act, and in the 31AM(8) notice letter noted set out the mitigation measures adopted into the Local Area Plan as a local objective. The notice letter also set out the Office's view that the mitigation measures largely rely on requiring compliance with Article 6 of the Habitats Directive for mitigation and that the NPWS in its submission to the Local Area Plan at material alterations stage did not consider that the high-level mitigation measures proposed in the NIR were appropriate to deal with the impacts of zoning of MA 41 for development. On this basis, the Office remains of the view 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 that 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 relation to the point that the SEA ER confirms the subject site of 1ha has the lowest environmental sensitivity and questions regarding site specific survey and assessment, Figure 4.20 of Addendum I to the SEA ER provides an overlay of environmental sensitivities in the plan area, including the subject lands. While the Office acknowledges that the subject site is illustrated as having close to the lowest environmental sensitivities,

the adjoining Murrough SPA / SAC is illustrated as having close to the highest environmental sensitivities, and it is the potential effects on the European sites that is the focus of the appropriate assessment process. Further, section 8.6 of Addendum I to the SEA ER states that the lands in question are zoned Natural Areas (OS2) having regard to their location vis-a-vis the adjacent European Site and its conservation objectives and sensitivities.

The Office does not consider that the identification of the subject site as having the lowest environmental sensitivities provides a sufficient basis to rezone the lands from Natural Area (OS2) to Employment (E) given the location of the site within Flood Zone A, and the proximity of The Murrough SPA / SAC, in the absence of a complete, precise or definitive finding and conclusion, and where reasonable scientific doubt remains as to the adverse effects of Employment (E) zoning on the European sites in question.

In relation to the point that Employment (E) zoning aligns with former NPF objectives, namely NPO 3a, NPO 13 and NPO 35⁸, the Office is of the opinion that the Planning Authority has not demonstrated that it is impracticable for it to meet objectives NPO 3a, NPO 13 and NPO 35 of the NPF (as amended by the Revised NPF) without contravening, in particular, NPO 78 of the NPF and RPO 7.12 in respect of MA 41.

In relation to the reasons that the draft Direction is unjust and undemocratic, restricts property rights, conflicts with the Local Government Act 2001 and that the Variation preparation process undermines procedural fairness and public consultation requirements

⁸ NPO 3a of the former NPF - Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

NPO 13 of the NPF (2018) - In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

NPO 35 of the former NPF - Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

of section 10 of the Act, the Office is satisfied that the relevant statutory provisions have been fully adhered to in this regard.

In relation to the questions raised in the Conway Roadfreight Ltd submission regarding the need for more site-specific surveys or assessment to support the decision to delete MA 41 from the adopted Local Area Plan, the Office is satisfied that its conclusions are supported by the surveys and assessments prepared as part of the plan making process for the reasons set out above.

[9] Conclusion

The Office also notes the Chief Executive's recommendation to implement the draft Direction and to revert the zoning of the lands to Open Space 2 (OS2), as set out in the proposed Variation.

Following consideration of the CE's Report and submissions made, the Office is of the view that there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to MA 41 Lands at The Murrough, Wicklow Town.

5. Recommendation to the Minister

13. In light of the above and for the reasons given in our 31AM(8) notice letter, the Office remains of the view, as set out in this notice letter, that the Variation has been made in a manner that is inconsistent with the recommendations of the Office, inconsistent with the objectives of the National Planning Framework and the Regional Spatial and Economic Strategy and as a consequence the use by the Minister of his functions to issue a direction under section 31 would be merited in respect of MA 20B, MA 38 and MA 41 to ensure that the Variation sets out an overall strategy for proper planning and sustainable development.
14. Having regard to section 31AN(4)(a) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the Direction with minor amendments identified in red text as per the attached proposed final Direction.

15. 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.

Yours sincerely,

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

Niall Cussen

Planning Regulator

Designated Public Official under the Regulation of Lobbying Act 2015

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 (as made).

“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 Midland Region.

“NPF” means the National Planning Framework First Revision (2025).

The Minister of State 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) (“the Act”) and the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2025 (S.I. No. 364 of 2025), 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~~ OS2), from New Residential – Priority 2 (RN2).
 - (ii) **MA 38** - i.e. the subject lands revert to Open Space (~~OS1~~ OS2), 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 NPF and RPO 7.12 of the RSES which seek 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 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 (MA 41).

The material alterations are therefore inconsistent with NPO 52, NPO 85, and NPO 87 of the 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, recommendations of the Office of the Planning Regulator made under section 31AM of the Act.
- IV. The Minister is of the opinion that the Variation is not consistent with the above-mentioned objectives of the 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 Official Seal,

Minister for Housing, Local Government and Heritage

Day of Month, Year.