

30th January 2026

Senior Planner,
Kilkenny County Council,
John Street,
Kilkenny.

**Re: Proposed Variation No. 9 to the Kilkenny City and County Development Plan
2021-2027**

A chara,

Thank you for your authority's work in preparing the proposed Variation No. 9 (proposed Variation) to the Kilkenny City and County Development Plan 2021-2027 (City and County Development Plan).

As Kilkenny County Council (Planning Authority) is aware, a key function of the Office of the Planning Regulator (Office) is the assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. The Office has evaluated and assessed the proposed Variation under the provisions of sections 31AM(1) and 31AM(2) of the Planning and Development Act 2000, as amended (Act) and this submission has been prepared accordingly¹.

Recommendations issued by the Office relate to clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28. As such, planning authorities are requested to implement or address recommendation(s) made by the Office in order to ensure consistency with the relevant policy and legislative provisions.

¹ Chapter 5 of Part 3 of the Planning and Development Act 2024, which relates to the preparation of development plans and variations by planning authorities and the assessment by the Office, was commenced on 31st December 2025. However, section 69(2) provides that the variation of a development plan under section 13 of the Act of 2000 shall continue under that Act after the repeal of section 13 of the Act of 2000.

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

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

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

Overview

The Office notes the proposed Variation has focused on a specific issue, namely the provision of temporary private wastewater treatment infrastructure in nine identified settlements where there is an existing deficiency in waste-water treatment facilities. This private infrastructure is proposed as an interim measure until such time as the planned public investment in waste-water treatment facilities in these areas has been provided.

While the Office acknowledges and appreciates the overall reasoning and approach your authority has taken in the preparation of the proposed Variation, the Office is concerned that the principle of this Variation is premature, as the Department for Housing Local Government and Heritage's (DHLGH) recent announcement on a temporary developer-led waste-water infrastructure initiative is still under preparation and has not been finalised.

Furthermore, this proposed policy wording and approach followed by the proposed Variation is not supported by Uisce Éireann's (UÉ) regulatory policy framework and therefore is inconsistent with National Policy Objective (NPO) 77 and NPO 92 of the National Planning Framework First Revision (2025) (NPF), which seek to enhance and protect water quality. Additionally, the Office is concerned that there is potentially inadequate consideration of the environmental impacts of the proposed Variation AA Screening Report, contrary to NPO 1 of the NPF and RPO 1 of the Regional Spatial and Economic Strategy (RSES) for the Southern Regional Assembly regarding environmental assessments.

As such, in the interests of expediency, this submission recommends that the Planning Authority either defer the introduction of this policy framework into the City and County Development Plan or amend the proposed Variation to apply any future regulatory and/or policy framework relating to developer-led wastewater infrastructure only once it is operational. This approach would allow the Planning Authority to the futureproof the development plan in relation to the forthcoming scheme, while continuing to safeguard water quality.

Having regard to the nature of the proposed Variation and the proximity to designated European sites, the Office also has concerns regarding the Appropriate Assessment (AA) Screening process regarding the potential likely significant effects on European sites, and whether a Stage 2 AA and preparation of a Natura Impact Report is required.

The submission below has been prepared to provide a strategic level input to your authority in finalising the proposed Variation. It is within the above context that the submission sets out one (1) recommendation under the following key theme:

Key theme	Recommendation	Observation
<u>Provision of temporary private wastewater treatment facilities in small towns and villages</u>	<u>Recommendation</u> <u>1</u>	-

1. Provision of temporary private wastewater treatment facilities in small towns and villages

The proposed Variation introduces a provision for temporary private wastewater treatment facilities in nine identified settlements within Kilkenny County where deficiencies exist in public wastewater treatment presently.

The Office notes the DHLGH's Ministerial announcement in November 2025, regarding a new initiative to introduce regulatory changes to provide new wastewater treatment facilities in collaboration with UÉ for smaller housing developments. To date, neither formal policy nor an associated circular has issued from the DHLGH to advise on how such matters will proceed. The Office further notes the proposed Variation at section 10.1.7 will not apply to housing schemes proposed within the settlements.

In the absence of the above, the Office notes that Draft Water Services Guidelines for Planning Authorities (January 2018) advises that solutions such as private wastewater treatment plants should not generally be considered by planning authorities, and that UÉ will not retrospectively take over responsibility for developer provided treatment facilities or associated networks, unless agreed in advance (section 5.3).

Furthermore, in response to this proposed Variation, UÉ has indicated it will not be supporting the Planning Authority's approach to temporary developer-led infrastructure in the proposed Variation and as such will not be responsible or engaged in their implementation, taking in charge, operation, maintenance, licencing or decommissioning. While the Office notes the wording that 'the proposed waste water infrastructure is constructed and maintained by a defined legal entity with sufficient interest to construct and maintain the facility until the public facility is provided', it is unclear what is envisaged by this legal entity process. Therefore, the future operation, maintenance and decommissioning of any such system may not be assured, which may result in potential associated risks to water quality and public health. Furthermore, there is no provision for such an approach that is supported by any policy framework.

The Office further notes that UÉ has confirmed that only two of the identified settlements Bennettsbridge and Paulstown have projects listed and progressing in the current investment plan (Revenue Control 4 - RC4) and that these are likely to have an estimated completion time of five to seven years. The Office notes that even these advanced projects will be expected outside the City and County Development Plan time period (2027). Therefore, there is a lack of clarity on how long the temporary private wastewater treatment arrangements will be in place before planned public wastewater treatment upgrades will be completed.

Although these issues are expected to be addressed through the forthcoming developer-led initiative currently being prepared by the DHLGH, the Office considers that, at this point in time, the proposal is not consistent with NPO 77 and NPO 92 of the NPF regarding the enhancement and protection of water quality. It is therefore recommended that the policy text be reviewed and amended to come into operation concurrently with, and in accordance with, the developer-led initiative under preparation by the DHLGH.

The Office also notes the proximity of designated European sites, including those that are hydrologically connected to the nine settlements, but that the proposed Variation was screened out for AA.

The Screening for Appropriate Assessment Report reviewed 21 designated Special Area of Conservation (SACs) and Special Protection Areas (SPAs) with ecological pathways to the City and County Development Plan's boundary within the 15 km radius at table 3.1 which indicated that the proposed Variation will not introduce a likelihood of significant or in combination effects or any additional sources for effects that were not already considered by the existing planning framework and associated AA processes. It was concluded that a Stage 2 AA was not required indicating that the

risks to the safeguarding of the qualifying interests, special conservation interests and conservation objectives of the European sites have been addressed through existing, already in force policies and objectives of the wider planning framework, including the Southern Regional Spatial and Economic Strategy 2020-2032 and the County Development Plan as varied with which lower tier plans/projects must comply.

The Office noted that the AA Appendix 1 has indicated that nine of the 21 designated sites indicated 'discharges' as a known 'Threats or Pressures' to certain SPA and SAC sites within the proposed Variation zone of influence. It is not clear that the information contained in the Screening for Appropriate Assessment Report has considered the implications of the proposed private temporary wastewater facilities and UÉ's position not to support the proposed Variation's policy and approach and how this has informed the AA screening conclusion that the Proposed Variation will not give rise to any likely significant effect on any European site, alone or in combination with any other plans. Furthermore, the cumulative effects of multiple private wastewater treatment facilities do not appear to be considered with an over reliance on general policies within the existing City and County Development Plan. Therefore, the Office recommends this position is reviewed in light of the nature of the issues raised above, and the requirement for consistency with NPO 1 of the NPF and RPO 1 of the RSES to ensure that all plans are subject to AA and SEA as appropriate.

Recommendation 1 – Investment in infrastructure and environmental considerations

Having regard to the co-ordination of development and infrastructure while safeguarding the receiving environment, and in particular to:

- NPO 77 and NPO 92 of the NPF to enhance water quality and resources management and ensure the alignment of planned growth with the efficient and sustainable use and development of water resources and water services infrastructure;
- NPO 1 of the NPF for environmental assessments, including Appropriate Assessment (AA);
- RPO 1 of the RSES for appropriate Environmental Assessment including SEA and AA processes;
- RPO 26 (Towns and Villages) of the RSES regarding water quality and coordination of UE and stakeholders to deliver investment in sustainable development of water and wastewater infrastructure;
- RPO 212 of the RSES, relating to strategic wastewater treatment facilities and avoiding negative impacts on water quality and Natura 2000 network;
- Objective 10A of the Kilkenny City and County Development Plan 2021-2027 (City and County Development Plan) to facilitate Uisce Éireann's water and wastewater infrastructure provision in accordance with the water services strategic plan; and
- Objective 10B of the City and County Development Plan to implement the measures of the River Basin Management Plan to restore and improve water quality,

the Planning Authority is recommended to:

- (i) review and amend proposed policy text at points 1- 3, section 10.1.7 to ensure that proposals for temporary, developer-led wastewater treatment facilities will only be considered once the regulatory and policy framework under the forthcoming Department for Housing Local Government and Heritage's initiative for developer-led wastewater infrastructure has been finalised and has come into operation; and

- (ii) review the Screening for Appropriate Assessment Report in light of any potential significant impacts, including cumulative effects, and if necessary complete a Natura Impact Report.

The Planning Authority should consult with Uisce Éireann in addressing this recommendation.

Summary

The Office requests that your authority addresses the recommendation outlined above. As you are aware, the report of the Chief Executive of your authority prepared for the elected members under section 13 of the Act must summarise these recommendations and the manner in which they will be addressed.

At the end of the process, your authority is required to notify this Office within **five working days** of the decision of the Planning Authority in relation to the proposed Variation. Where your authority decides not to comply with the recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with the recommendations made by this Office, then the Chief Executive shall inform the Office and give reasons for this decision.

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

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Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluation

Designated Public Official under the Regulation of Lobbying Act 2015