Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

2nd September 2024

Alan Dillon TD,
Minister of State for Local Government and Planning,
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) – County Donegal Development Plan 2024-2030

A chara,

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 the County Donegal Development Plan 2024-2030 (the Development Plan). In particular, I write arising from the consideration by this Office of the following:

a) the Notice of Intent to issue a Direction issued to Donegal County Council (the Planning Authority) by your office on 26th June 2024, and

b) the report of the Chief Executive of the Planning Authority received on 13th August 2024 on the submissions and observations received by the Planning Authority (the CE's Report).

I refer also to the six (6) submissions made directly by five (5) of the elected members of the Planning Authority to this Office, and considered by this Office pursuant to section 31(10)(a) of the Act.

This Office has carefully considered the CE's Report and the submissions made directly to this Office.

Draft Direction

Part 2 of the draft Direction contained four parts (a), (b), (c) and (d):

(a) *Delete the following zoning objectives from the adopted Development Plan:*

(i) that part of Buncrana NR 1.11 which was zoned Agricultural / Rural under the County Donegal Development Plan 2018-2024, i.e. the subject land reverts to not zoned from New Residential (Phase 1);

(ii) Buncrana NR 1.12, i.e. the subject land reverts to not zoned from New Residential (Phase 1);

(iii) Site to the south east of Buncrana in the townland of Luddan, i.e. the subject land reverts to not zoned from Business / Enterprise;

(iv) Ballybofey/Stranorlar NR 2.2, i.e. the subject land reverts to not zoned from New Residential (Phase 2);

(v) Ballybofey/Stranorlar BE1, i.e. the subject land reverts to not zoned from Business / Enterprise.

(b) *Delete the following material alterations from the adopted Development Plan:*

(i) Buncrana MA 18(b).11, i.e. the subject land reverts to Open Space and Recreation from New Residential (Phase 1);

(ii) Buncrana MA 18(b).12, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1);

(iii) Buncrana MA 18(b).13, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1);

(iv) Buncrana MA 18(b).15, i.e. the subject land reverts to Strategic Residential Reserve from New Residential (Phase 1);

(v) Buncrana MA 18(b).16, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1);

(vi) Ballybofey / Stranorlar MA 19(b).2, i.e. the subject land reverts to Rural Agricultural from New Residential (Phase 2);

(vii) *MA 21(b).1 Carrick / An Charraig, Settlement Frameworks;*

(viii) *MA 21(b).3 Bruckless, Settlement Frameworks;*

(ix) *MA 21(b).5 Mountcharles, Settlement Frameworks;*

(x) *MA 21(b).7, parts 'B' and 'C', Creeslough, Settlement Frameworks i.e. the land subject of part 'C' reverts to 'Amenity Area';*

(xi) *MA 21(b).8 Dunfanaghy, Settlement Frameworks;*

(xii) *MA 21(b).12 Newtowncunningham, Settlement Frameworks;*

(xiii) *MA 21(b).14 Kilmacrennan, Settlement Frameworks;*

(xiv) *MA 21(b).9 part 'B' Fahan, Settlement Frameworks;*

(xv) *MA 21(a).3, Policy SP-P-xx.*

(c) *Delete policy T-P-12 (b) and (c) and associated text in section 8.1.3.1; and*

(d) *Amend policy T-P-12(a) as follows (deletions in strikethrough red, additions in green)*

It is a policy of the Council not to permit developments requiring new accesses, or which would result in the: ~~adverse intensification of existing access points onto:~~

i. intensification of existing access points onto National Roads where the speed limit is greater than 60 kph; or

ii. adverse intensification of existing access points onto the section of the R238 Bridgend-Buncrana Regional Road where the speed limit is greater than 60 kph.

Notwithstanding the foregoing, in exceptional circumstances, developments of national and regional strategic importance where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed may be considered, subject to such developments being provided for through the Local Area Plan or Development Plan making process, including in consultation with the TII.

Following detailed consideration of the CE's Report and submissions made directly to the Office, the Office now recommends, pursuant to section 31AN(4) of the Act that you issue the attached final Direction with a minor amendment to the draft Direction to omit part 2(b)(x) MA 21(b).7, in respect of the land the subject of part C only, in accordance with the recommendation of the Chief Executive.

In addition, the Office notes that the Statement of Reasons (paragraph II), as contained in the Ministerial draft Direction, incorrectly references Moville instead of Fahan. The Office therefore also recommends a minor amendment to the draft Direction to replace 'Moville' with 'Fahan' consistent with part 2(b)(xiv) of the said draft Direction.

In making this recommendation, this Office reiterates the submissions made to the Minister in the Notice which issued from this Office to your office on 12th June 2024 pursuant to section 31AM(8) of the Act (31AM(8) Notice Letter).

Public Consultation on the Draft Direction

The public consultation on the draft Direction took place from 5th July to 18th July 2024 inclusive. The CE's Report summarises the views of members of the public, elected members and the prescribed authorities that made submissions to the Planning Authority. The Chief Executive received four (4) submissions from three (3) elected members – Councillor Micheál Choilm Mac Giolla Easbuig (opposing Part 2(c) and Part 2(d)), Councillor Niamh Kennedy (opposing Part 2(b)(vii) MA 21(b).1 Carrick / An Charraig, Settlement Frameworks) and two from Councillor Noel Jordan (opposing Part 2(b)(ix) – MA 21(b).5 Mountcharles, Settlement Frameworks – sites A and B).

You might please note the following:

- The Office received six (6) submissions from five (5) elected members:
    - one (1) submission from **Councillor Paul Canning accepts the draft Direction in respect of Part 2(b)(xii) - MA 21(b).12 Newtowncunningham, Settlement Frameworks**, but suggests that part of B be investigated for use as a town park;

- five (5) submissions from Councillors oppose the draft Direction in respect of specific parts of the following:

  Councillor Noel Jordan opposes Part 2(b)(ix) – MA 21(b).5 Mountcharles, Settlement Frameworks and made two separate submissions in respect of site A and site B. The reasons given are that a new WWTP in Q1 2025 will resolve capacity constraints; only 47 units have been developed in the last 20 years; the two sites are within walking distance of the centre and public transport. Two submissions from members of the public were appended to Councillor Jordan's submission and are detailed further below.

  Councillor Niamh Kennedy opposes Part 2(b)(vii) MA 21(b).1 Carrick / An Charraig, Settlement Frameworks. The reasons given are that the land the subject of part C should be retained for a tourism, educational and environmental project comprising use of a portion of lands for bee-keeping and other natural based amenities as no other lands are available in this area for such a project.

  Councillor Liam Blaney opposes Part 2(b)(xi) MA 21(b).8[1] Dunfanaghy, Settlement Frameworks. The reasons given are that part of this site will consist of a caravan park / campervan site, located on edge of the settlement to prevent traffic congestion.

  Councillor Michael McClafferty opposes Part 2(c) and Part 2(d). The reasons given relate to access for families from the N56.

- The CE's Report summarises the views and recommendations of the elected members as expressed at the Plenary Council meeting of 22nd July 2024 (Plenary Council Meeting), and which address and made a recommendation in respect of all of the parts of the draft Direction.

  As set out in the CE's Report, the elected members oppose the draft Direction in respect of the following, for the following reasons (where stated):

[1] Note, the CE's Report erroneously refers to MA 21(b).20 in respect to the Councillor's comments on Dunfanaghy. As no such material alterations was included in the published Material Alterations or in the draft Direction, it can reasonably be assumed that it was intended to refer to MA 21(b).8.

- In respect of Buncrana: Part 2(a)(iii) Site to the south east of Buncrana in the townland of Luddan, Part 2(b)(i) Buncrana MA 18(b).11, Part 2(b)(ii) Buncrana MA 18(b).12, Part 2(b)(iii) Buncrana MA 18(b).13, Part 2(b)(iv) Buncrana MA 18(b).15, and Part (2)(b)(v) Buncrana MA 18(b).16.

  These were collectively discussed and opposed unanimously by elected members for the reasons that the material alterations were subject to extensive consultation; the sites can avail of services and infrastructure for much needed housing; located in areas where additional housing is required due to 'defective blocks'; local knowledge; and the lands are not peripheral.

- Part (2)(a)(iv) Ballybofey/Stranorlar NR 2.2. The reasons given are that the rationale for excluding the site is not explained in the draft Direction and that it is an infill site surrounded by development.

- Part (2)(a)(v) Ballybofey/Stranorlar BE1. The reasons given are that there are no largescale areas for businesses in the town, resulting in applicants not being able to get permission in the core area; and that it is sensible that new facilities (referred to as manufacturing plants) be located on the periphery of the town accessible by a national route, without flood risk, where they would not cause noise pollution.

- Part (2)(b)(vi) Ballybofey / Stranorlar MA 19(b).2 . The reasons given are that the site is only 200m from a college; has wastewater and water supply services; the landowner is willing to provide short section of footpath; other landowners may not wish to build on Phase 1 lands; and the site is an Infill site.

- Part (2)(b)(vii) MA 21(b).1 Carrick / An Charraig, Settlement Frameworks. The reasons given are that the lands should be retained for a tourism, educational and environmental project compromising of a portion of lands for bee-keeping and other natural based amenities on the lands owned by the developer in order to enhance the visitor

experience on entrance to the village of Carrick, as there are no other lands are available in this area for such a project.

- Part (2)(b)(viii) MA 21(b).3 Bruckless, Settlement Frameworks. The reasons given are that the re-zoning would give the developer a chance to finish out the unfinished development on site where there is a housing shortage and shortage of development land; and that work has been carried out to alleviate previous flooding concerns.

- Part (2)(b)(ix) MA 21(b).5 Mountcharles, Settlement Frameworks. The reason given is that land is needed to facilitate future sustainable growth of the town.

- Part (2)(b)(x) MA 21(b).7, parts B and C, Creeslough, Settlement Frameworks. The reasons given are that the boundaries need to be expanded to take account of the RRDF funding; there's little option for developers due to topography; and due to pressure for childcare facilities and housing.

- Part 2(b)(xi) MA 21(b).8 Dunfanaghy, Settlement Frameworks. The reasons given are that the lands are within safe walking distance of the village and should be considered for affordable housing for local residents as there is a lack of land supply for residential development in the village.

- Part 2(b)(xiii) MA 21(b).14 Kilmacrennan, Settlement Frameworks. The reasons given are that the material alteration will provide for housing needed in the area; and that the site is unsuitable for development with regard to public infrastructure.

- Part 2(b)(xiv) MA 21(b).9 part B Fahan, Settlement Frameworks. The reasons given are that a hospitality-type development has merit for the village, for the Inishowen Peninsula and for Derry City; that much needed WWT infrastructure investment is too far down the line; and that local knowledge suggests there is interest to pursue such development.

- Part 2(b)(xv) MA 21(a).3, Policy SP-P-xx. The reasons given are the same as for Part 2(b)(xiv) MA 21(b).9 part B Fahan, Settlement Frameworks.

- Part 2(c). The reasons given are that TDs previously supported development of one-off housing with access onto N56; road safety is paramount but development can be facilitated by achieving adequate sight lines and safe access; sterilisation of land along the N56 means people will have to leave, including at Dunfanaghy, Creeslough and Kilmacrennan; national policy is not working in Donegal; can't build service garages along N56; questions what proof the Minister has about accidents on N56; discrimination against working classes; asks what does intensification mean; should be allowed where there is an existing entrance, not a desktop exercise; large developments may be exempted but not houses; and inconsistency in approach with access permitted on some other roads that have un-safe accesses and not on N56 where it is suitable.

- Part 2(d). The reasons given are as per Part 2(c).

As set out in the CE's Report, the elected members agreed to the following parts of the draft Direction:

- Part 2(a)(i) that part of Buncrana NR 1.11.

- Part 2(a)(ii) Buncrana NR 1.12.

- As set out in the CE's Report, 21 submissions were received from the public during the statutory public consultation period which were deemed within scope. Two submissions were deemed out of scope by the Chief Executive for reasons stated in section 2.5 of the CE's Report, and the Office concurs with the Chief Executive's reasons in this regard

  Of the submissions that the Chief Executive considered to be relevant to the draft Direction:

  - One (1) submission opposes Part 2(b)(i) – Buncrana.

- Two (2) submissions oppose Part 2(b)(ix) Mountcharles.
- Two (2) submissions oppose Part 2(b)(x) Creeslough, one against site 'B' and one against site 'C'.
- One (1) submission opposes Part 2(b)(xi) Dunfanaghy.
- 12 submissions oppose Part 2(c) Policy T-P-12 (b) and (c), and two (2) submissions are unclear.
- 12 submissions oppose Part 2(d) Policy T-P-12(a), and two (2) submissions are unclear.
- One (1) submission relating to Policy T-P-12 was not summarised within the CE's Report.

- As set out in the CE's Report, Transport Infrastructure Ireland (TII) made a submission supporting the draft Direction in respect of:
    - Part 2(b)(viii) Bruckless
    - Part 2(b)(ix) Mountcharles
    - Part 2(b)(xi) Dunfanaghy
    - Part 2(b)(xii) Newtowncunningham
    - Part 2(b)(xiii) Kilmacrenan
    - Part 2(c) Policy T-P-12 (b) and (c)
    - Part 2(d) Policy T-P-12(a)
- As set out in the CE's Report, the National Transport Authority (NTA) made a submission supporting the draft Direction in respect of:
    - Part 2(c) Policy T-P-12 (b) and (c).
    - Part 2(d) Policy T-P-12 (a) .

- As set out in the CE's Report, the Department of Housing, Local Government and Heritage (DHLGH) National Parks and Wildlife Service (NPWS) made a submission supporting the draft Direction in respect of:
    - Part 2(b)(xiv) part 'B' Fahan.
    - Part 2(b)(xv) Policy SP-P-xx.
- Three (3) additional submissions were received outside the consultation period. These submissions are appended to the CE's Report, but were not summarised and no comment is made in respect of their content by the Chief Executive. No account has been taken of these submissions by the Office.

Chief Executive's Recommendation

The CE's Report prepared in accordance with section 31(8) of the Act recommends to implement the following parts of the draft Direction:

- Part 2(a) (i), (ii), and (v)

- Part 2(b) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (xi), (xii), and (xiii)

The CE's Report recommends to retain the following parts of the adopted Development Plan contrary to the draft Direction:

- Part 2(a) (iii) and (iv)

- Part 2(b) (x), (xiv) and (xv)

CE's Report recommends to implement the draft Direction but subject to a suggested amendment in respect of the following parts:

- Part 2(c)

- Part 2(d).

Consideration of Reasons

In response to Part 2(a) to delete the zoning objectives from the Development Plan under (i), (ii), (iii), (iv) and (v)

Part 2(a) (i) that part of Buncrana NR 1.11 which was zoned Agricultural / Rural under the County Donegal Development Plan 2018-2024, i.e. the subject land reverts to not zoned from New Residential (Phase 1) and Part 2(a) (ii) Buncrana NR 1.12, i.e. the subject land reverts to not zoned from New Residential (Phase 1)

The CE's Report recommends that the Minister '*delete the subject site as per the Draft Direction'* in respect of both these parts on the basis that '*The Minister's proposed course of action and rationale are consistent with recommendations contained in the Chief Executive's Report at Draft Plan stage'*.

This was supported by the elected members at the Plenary Council Meeting and no submissions have been received by the Planning Authority or the Office opposing same.

Following consideration of the CE's Report, there is no planning or policy basis to amend the recommendation of this Office in respect of the draft Direction in relation to part 2(a)(i) or (ii).

Part 2(a)(iii) Site to the south east of Buncrana in the townland of Luddan, i.e. the subject land reverts to not zoned from Business / Enterprise

The Chief Executive recommends that the Minister '*RETAIN this zoning contrary to the Draft Direction'* in respect of the deletion of the Business / Enterprise zoning objective for this site.

While the CE's Report considers that the '*subject zoning conforms with national* [and] *regional … policy objectives',* the basis for this conclusion is not evident.

The Chief Executive's reasons include that *'the site's position towards the southern end of the town, … [is] geographically suited to benefit from strategic transport connections to the Derry metropolitan area and the Northwest City Region (circa 25km)'.* The Chief Executive does not elaborate on the nature of these strategic

connections, which would appear to relate only to the regional road network (the R238).

The Chief Executive also considers that this site is *'located close to an existing business park that is nearing full development and therefore would* provide advantages/opportunities in terms of proximity and agglomeration'. The Chief Executive does not indicate the existing business park lands to which they are referring. The Office notes that there are lands zoned 'Established Development' c.500m to the north, along the R238 (Old Road / Lower Main Street), which accommodate industrial / commercial type structures.

The subject site is located on the far side of a proposed future bypass, the subject of an objective in the adopted Development Plan. It is currently accessed via a local road of varying standard, which is largely without footpaths and/or public lighting, c.1.5km from the R238. There are therefore extensive other greenfield lands zoned for agriculture that are located closer to the 'Established Development' zoning objective, on the town side of the route of the proposed bypass, and that could potentially access the R238 without the delivery of the bypass.

Neither the submissions of the elected members nor the general public addressed this part of the draft Direction. However, the elected members at the Plenary Council meeting opposed this part of the draft Direction for reasons, which they applied collectively in respect of 2(a)(iii), 2(b)(i), 2(b)(ii), 2(b)(iii), 2(b)(iv) and 2(b)(v). The reasons given are that the material alterations were the subject of extensive consultation; the sites can avail of services and infrastructure for much needed housing; located in areas where additional housing is required due to 'defective blocks'; and greater regard should be given to the local knowledge of the local representatives in the town. These reasons do not provide justification for the Business / Enterprise zoning of the subject site and can be seen to apply more generally to the residential zonings concerned.

However, the reasons given by the Chief Executive and by the elected members fail to adequately address the reasons given in the draft Direction that the lands, which can accommodate a range of high intensity employment uses, are unserviced and

peripherally located outside the CSO settlement boundary[2] and beyond the line of the future proposed bypass, inconsistent with: compact growth; the tiered approach to zoning; support for employment and activity in towns; and the better integration of land use and transport planning to reduce vehicular kilometres travelled. Furthermore, the reasons of the Chief Executive and elected members do not demonstrate that the planning authority has followed an evidence-based approach to this employment zoning to justify its location and the range of uses to be accommodated having regard to the mandatory objectives for sustainable settlement and transportation strategies and section 6.2.5 of the Development Plans, Guidelines for Planning Authorities (2022) (Development Plan Guidelines).

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(a)(iii) in light of the policy and legislative requirements identified.

Part 2(a)(iv), Ballybofey/Stranorlar NR 2.2, i.e. the subject land reverts to not zoned from New Residential (Phase 2)

The Chief Executive recommends that the Minister '*RETAIN this zoning contrary to the Draft Direction*' in respect of the residential zoning objective (Phase 2) for this site.

The Chief Executive refers to the fact that the site was previously zoned under the Seven Strategic Towns Local Area Plan 2018-2024, which the Office previously acknowledged in the 31AM(8) Notice Letter. However, the CE's Report also confirms that the site is not currently serviced as it requires a sewer extension. Therefore, the policy and objective under section 4.4.1 of the Development Plans Guidelines to not de-zone previously zoned and serviced lands does not apply.

Addressing the Settlement Capacity Audit which states that a 90m footpath extension is required, the Chief Executive states that the site is serviced by a footpath opposite. However, there would appear to be sections of road between the

[2] This means within the existing built-up footprint of all sizes of urban settlement, as defined by the CSO in line with UN criteria i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

site and the town without footpaths (and there are no footpaths bounding the site directly), therefore the site cannot be considered to be fully serviced and would require significant investment in order to be serviced in this respect.

The Chief Executive also submits that the bulk of the site lies outside the HEFS Flood Zone A and B and any flood risk on the periphery of the site is adequately addressed via Policy BS-H-P-2 (g), however flood risk was not a reason given for the draft Direction in respect of this site.

No submissions were received by the Planning Authority in relation to this part of the draft Direction. However, the elected members at the Plenary Council meeting opposed this part of the draft Direction on the basis that the rationale for excluding the site is not explained in the draft Direction and that it is an infill site surrounded by development.

In relation to the rationale for requiring the deletion of this zoning objective, the 31AM(8) Notice Letter clearly sets out the basis for the Office's opinion that the zoning objective is inconsistent with NPO 3c of the NPF, RPO 3.2 of the RSES and/or NPO 74 of the NPF and the national strategic objective for compact growth, NPO 72a-c of the NPF and having regard to the policy and objective for settlement capacity audits under the Development Plans Guidelines, section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies and the obligations under the Climate Action Plan 2024 (Climate Action Plan) and the Climate Action Low Carbon and Development Acts 2015, as amended (Climate Act), and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines. Specifically, the lands are located in a peripheral and non-sequential location outside the CSO settlement boundary; would require significant infrastructure upgrades and extensions to footpaths and public lighting; and would not facilitate, support or encourage active travel. Furthermore, the lands are not required to ensure a sufficient supply of housing having regard to the growth targets under the core strategy.

In relation to the reason that the site is an infill site, the Office acknowledges that there is extensive ribbon development along the rural road network at this location. However, the site is located in a peripheral location outside the CSO settlement boundary and does not facilitate infill development consistent with compact growth.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(a)(iv) in light of the policy and legislative requirements identified.

Part 2(a)(v) Ballybofey/Stranorlar BE1, i.e. the subject land reverts to not zoned from Business / Enterprise

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the Business / Enterprise zoning objective for this site on the basis that there are alternative and better located sites zoned for employment purposes and the draft Direction is consistent with the recommendations of the CE's Report at draft Plan stage dated January 2024.

No submissions were received by the Planning Authority opposing this part of the draft Direction. However, the elected members opposed this part of the draft Direction at the Plenary Council Meeting for the reason that there are no largescale areas for businesses in the town, resulting in applicants not being able to get permission in the core area; and that it is sensible that new facilities (referred to as manufacturing plants) be located on the periphery of town accessible by a national route, without flood risk, where they would not cause noise pollution.

As set out in the 31AM(8) Notice Letter to your office, these reasons as they relate to the provision of zoned land to facilitate employment type uses 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 in response to those similar points raised again by the elected members. Furthermore, there is no evidence that facilities such as manufacturing plants cannot be provided for on the '*alternative and better located sites zoned for employment purposes*' referred to by the Chief Executive.

The Office considers the reasons given by the elected members do not adequately address the substantive reasons for the Office's recommendation in respect of site Ballybofey / Stranorlar BE1, which relate the fact that these lands, which can accommodate a range of high intensity employment uses, are located outside the CSO settlement boundary; are not serviced by footpaths or lighting; and the

submission from Uisce Éireann states that a long sewer extension >500m is required for site Ballybofey / Stranorlar BE1.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(a)(v) in light of the policy and legislative requirements identified.

In response to Part 2(b) to delete the following material alterations from the adopted Development Plan, under (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv) and (xv)

Part 2(b)(i) Buncrana MA 18(b).11, i.e. the subject land reverts to Open Space and Recreation from New Residential (Phase 1)

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction'* in respect of the residential zoning objective (Phase 1) for this site consistent with the CE's Report at MA stage dated May 2024 (CE's Report MA Stage).

No submission was received from elected members opposing this part of the draft Direction, however the elected members at the Plenary Council Meeting opposed this part for reasons, which they applied collectively in respect of 2(a)(iii), 2(b)(i), 2(b)(ii), 2(b)(iii), 2(b)(iv) and 2(b)(v).

One submission was received by the Planning Authority from the public opposing this part of the draft Direction for the reasons that: the site is suitable for residential development as it is well drained and has services nearby; there is extensive mixed-use development adjacent; permission has been granted for extensive residential development adjacent regardless of flood zones; the lands were previously zoned under the Development Plan 2018-2024; there is no history of flooding in living memory; the site has access to west and east; and, in the permitted adjacent development the Planning Authority has created a '*cordon sanitaire'* to serve as open space for adjacent development.

The CE's Report responds to the reasons that the site is well drained and has never flooded in living memory, and there is extensive residential development adjacent

regardless of flood zones, pointing out that the '*updated [coastal zone flood hazard] mapping [2021] showed a significant portion of the subject site and the referenced adjacent site within the flood risk area, whereas both sites were outwith the flood risk area in the previous mapping',* and that the OPW advised that impacts from climate change needed to be considered and the precautionary approach applied.

A key message of the *Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) (Flood Guidelines) is that flood risk should in the first instance be managed through the statutory plan-making process to avoid development in areas at risk of flooding and to adopt a sequential approach to flood risk management. This matter was previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members.

The Office does not dispute that there is adequate access to the site, or that the site has services nearby and adjacent open space, however these reasons do not justify zoning land for residential development in areas at risk of flooding inconsistent with NPO 57 of the NPF and RPO 3.10 of the RSES to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines. Further, it is not clear what effect the '*cordon sanitaire'*, referred to in the submission, would have in respect of the flood risk associated with the subject site and its suitability or not to accommodate a highly vulnerable use. However, under the Flood Guidelines, the presence of flood protection structures should be ignored in determining flood zones.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(i) in light of the policy and legislative requirements identified.

Part 2(b)(ii) Buncrana MA 18(b).12, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1)

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction'* in respect of the residential zoning objective (Phase 1) for this site, '*having regard to the peripherality of the site/availability of other more centrally located sites to fulfil the Core Strategy requirement'* which concerns were reflected in

the CE's Report (MA stage) *'and are consistent with the Minister's proposed course of action and rationale'*.

No submissions were received by the Planning Authority opposing this part of the draft Direction. However, the elected members at the aforementioned Plenary Council Meeting opposed this part of the draft Direction for the reasons set out, above, collectively in respect of 2(a)(iii) and 2(b)(i), (ii), (iii), (iv) and (v).

In relation to the services and infrastructure availability, it is not clear if the subject land is serviced as these lands were not included in the Settlement Capacity Audit included in the CE's Report (MA stage) and no specific evidence has been provided by the elected members. Notwithstanding, the land is located in a peripheral location some 1.2km from the town centre and the Office agrees with the assessment of the Chief Executive regarding the peripheral location of the site and availability of other more centrally located sites to fulfil the core strategy requirement.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(ii) in light of the policy and legislative requirements identified.

Part 2(b)(iii) Buncrana MA 18(b).13, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1)

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the residential zoning objective (Phase 1) for this site, '*having regard to the peripherality of the site/availability of other more centrally located sites to fulfil the Core Strategy requirement',* which concerns were reflected in the CE's report at MA stage *'and are consistent with the Minister's proposed course of action and rationale.'*

No submissions were received by the Planning Authority opposing this part of the draft Direction. However, the elected members at the aforementioned Plenary Council Meeting opposed this part of the draft Direction for the reasons set out, above, collectively in respect of 2(a)(iii) and 2(b)(i), (ii), (iii), (iv) and (v).

In relation to the reason that the site could avail of services and infrastructure for much needed housing, the Office raised no concerns regarding the servicing of the subject lands. Notwithstanding, the land is located in a peripheral location some 750m from the town centre[3], the Office agrees with the assessment of the Chief Executive regarding the peripheral location of the site and availability of other more centrally located sites to fulfil the core strategy requirement.

Regarding the need for additional zoned lands to accommodate demand arising from the 'defective blocks' issue, as stated in the 31AM(8) Notice Letter, the adopted Development Plan would provide for c.38ha of residential land, even accounting for the omissions under the draft Direction, compared to 19ha determined as required in the core strategy.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(iii) in light of the policy and legislative requirements identified.

Part 2(b)(iv) Buncrana MA 18(b).15, i.e. the subject land reverts to Strategic Residential Reserve from New Residential (Phase 1) and Part 2(b)(v) Buncrana MA 18(b).16, i.e. the subject land reverts to Rural / Agricultural from New Residential (Phase 1)

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect the residential zoning objective (Phase 1) for both of these sites for the same reason, '*having regard to the peripherality of the site/availability of other more centrally located sites to fulfil the Core Strategy requirement',* which concerns were reflected in the CE's Report (MA stage) *'and are consistent with the Minister's proposed course of action and rationale.'*

No submissions were received by the Planning Authority opposing these parts of the draft Direction. However, the elected members at the aforementioned Plenary Council Meeting opposed these parts for the reasons set out, above, collectively in respect of 2(a)(iii) and 2(b)(i), (ii), (iii), (iv) and (v).

[3] Road distance.

In relation to the reason that the sites could avail of services and infrastructure for much needed housing, these matters were previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members.

In relation to the reason that the lands are not peripheral, the Office notes that the sites are located on the eastern periphery of the town in an area without footpaths or public lighting, and the Office agrees with the assessment of the Chief Executive regarding the peripheral location of the sites and availability of extensive other more centrally located sites to fulfil the core strategy requirement. Furthermore, the peripheral location and lack of footpaths in the area means that the zoning objectives do not contribute to sustainable settlement and transport strategies in conflict with the Climate Action Plan, the goals of the National Sustainable Mobility Policy and the targets under the Climate Act.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(iv) or (v) in light of the policy and legislative requirements identified.

Part 2(b)(vi) Ballybofey / Stranorlar MA 19(b).2, i.e. the subject land reverts to Rural Agricultural from New Residential (Phase 2)

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the residential zoning objective (Phase 2) for this site, '*having regard to the peripherality of the site/availability of other more centrally located sites to fulfil the Core Strategy requirement, and concerns around the serviceability of the site (particularly in terms of footpaths),'* which concerns were reflected in the CE's Report (MA stage) *'and are consistent with the Minister's proposed course of action and rationale.'*

No submissions were received by the Planning Authority opposing this part of the draft Direction. However, the elected members at the aforementioned Plenary Council Meeting opposed this part of the draft Direction for the reasons that the site is only 200m from a college; has wastewater and water supply services; the

landowner is willing to provide short section of footpath; other landowners may not wish to build on Phase 1 lands; and the site is an Infill site.

In relation to the reasons of proximity to the school, wastewater and water supply services, and landowners not wishing to build on Phase 1 lands, these matters were previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members. In particular, Uisce Éireann's submission at MA stage states that upgrades of the water supply and wastewater network are likely to be required over a distance of 200-300m, and a pumped solution to sewerage may be required.

Regarding the landowner provision of footpaths, c.100m of footpath is required to connect up to the existing footpath network.

In relation to the reason that the site is infill, the site is located in a peripheral location approximately two-thirds of which is located outside the CSO boundary and would not facilitate infill development consistent with compact growth.

The Office agrees with the assessment of the Chief Executive regarding the peripheral location of the site, and availability of other more centrally located sites to fulfil the core strategy requirement. Furthermore, the peripheral location and lack of footpaths in the area means that the zoning objective does not contribute to sustainable settlement and transport strategies in conflict with the Climate Action Plan, the goals of the National Sustainable Mobility Policy and the targets under the Climate Act.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(vi) in light of the policy and legislative requirements identified.

Part 2(b)(vii) MA 21(b).1 Carrick / An Charraig, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the Carrick / An Charraig, Settlement Framework, '*having regard to the peripherality and serviceability of the site (particularly in terms*

of footpaths),' which concerns were reflected in the CE's Report (MA stage) *'and are consistent with the Minister's proposed course of action and rationale.'*

The Office received one submission from an elected member (Councillor Kennedy) opposed to the draft Direction for the reasons that the lands should be retained for a tourism, educational and environmental project, comprising of a portion of lands for bee-keeping and other natural based amenities, in order to enhance the visitor experience on entrance to the village of Carrick, as there are no other lands available in this area for such a project.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed the draft Direction in respect this part for the same reason as that of Councillor Kennedy.

In relation to the reason that lands should be retained for a tourism, educational and environmental project, this was previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members.

The Office agrees with the assessment of the Chief Executive regarding the peripheral location outside of the CSO settlement boundary and c.500m from the centre of this small rural settlement, and serviceability of the site, particularly in terms of footpaths but also the inadequate public wastewater treatment capacity in the area.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(vii) in light of the policy and legislative requirements identified.

Part 2(b)(viii) MA 21(b).3 Bruckless, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the Bruckless, Settlement Frameworks,

> *having regard to the absence of any occupied dwellings, and the peripherality and serviceability of the site. In particular: strong likelihood that no vehicular access to the site can be provided other than from the N56 National*

Secondary Road at a point where the maximum speed limit applies (comments of TII are noted in this regard); the lack of a public footpath into the settlement centre; the lack of public foul water sewerage capacity (and the unacceptability in policy of utilising a private communal treatment system); and the history of flooding inundation issues particular to the site.

No submissions were received by the Planning Authority from elected members or the public opposing this part of the draft Direction.

One submission was received from TII supporting the draft Direction for the reason that access to lands which adjoin or extend along the national road network outside locations subject to a reduced 50–60 kph urban speed limit should conform to the requirements of the Department of the Environment, Community and Local Government's Spatial Planning and National Roads Guidelines for Planning Authorities (2012) (National Roads Guidelines) concerning the general restriction on access to national roads and Policy T-P-12 (a) of the draft Development Plan to ensure conformance with official policy provisions included in RPO 6.5 of the RSES, NPO 74 of the NPF and national strategic outcomes NSO 1 and NSO 2.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed this part of the draft Direction for the reasons that the re-zoning would give the developer a chance to finish out the unfinished development on site where there is a housing shortage and shortage of development land; and that work has been carried out to alleviate previous flooding concerns.

In relation to the planning history on the site, these matters were previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members.

In particular, the Office notes that there is no extant planning permission on the site, that the unfinished development referred to relates to a planning permission in 2002 for 14 dwellings served by an on-site WWTP, and that while works were commenced the dwellings were not constructed.

The Office is of the view that this historic permission is not a reasonable basis for the material alteration to extend the boundary of Bruckless to encompass this detached site. The Office agrees with the assessment of the Chief Executive regarding the

peripheral location of the site; the difficulties with access other than from the N56 National Secondary Road at a point where the maximum speed limit applies; and the lack of adequate infrastructure services including public footpaths and lighting and public wastewater treatment capacity.

In relation to the reason that work has been carried out to alleviate previous flooding concerns, under the Flood Guidelines, the presence of flood protection structures should be ignored in determining flood zones.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(viii) in light of the policy and legislative requirements identified.

Part 2(b)(ix) MA 21(b).5 Mountcharles, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject sites as per the Draft Direction*' in respect of the Mountcharles, Settlement Framework. The reasons given in respect of site A are '*the peripherality and serviceability of the site (particularly in terms of footpaths), the proximity to native woodlands, and the disproportionate scale of the site relative to the existing village …* [as] *reflected in the Chief Executive's Report at Proposed Material Alterations stage'.* The reasons given in respect of site B are that '*the localised road/pedestrian safety issue in terms of the constraints to achieving an adequate footpath connection, as set out in the Chief Executive's Report at Proposed Material Alterations stage, remains'.*

The Office received two submissions from an elected member (Councillor Jordan), one each opposed to the draft Direction in respect of site A and site B for the reasons (effectively the same for both sites) that WWTP capacity constraints in Mountcharles will be resolved by Uisce Éireann in Q1 2025 with a new WWTP, only 47 units have been built over the last 20 years and the lands are within walking distance of the centre and public transport, and development will enable the town to expand.

The submission from Councillor Jordan also included an attachment of the two submissions received by the Planning Authority from/or on behalf of a member of the public. In addition to those reasons already raised by the elected member, the public

submissions also submit that there is a very limited area of land available for development[4], development of the town is hindered by lack of development land, there is a lack of family homes and that development would deliver benefits including stimulating economic growth.

One submission was received from TII which supports the draft Direction for the same reasons as detailed above in respect of part 2(b)(viii), Bruckless.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed the draft Direction in respect of this part for the reason that land is needed to facilitate the future sustainable growth of the town.

In relation to the reason that WWTP capacity constraints will be resolved in Q1 2025, this matter was considered in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members. Notwithstanding the resolution of this matter within the plan period, the Office agrees with the assessment of the Chief Executive regarding the lack of a public footpath and lighting to provide connectivity to the services and amenities of the village at these peripheral locations, the larger of which (site A) is situated outside the CSO settlement boundary and is almost fully detached from the original draft Development Plan settlement boundary.

In relation to the reasons that there is a lack of housing in the area and that development of these lands would allow the town to expand and stimulate economic growth, the Office notes that there are extensive areas of undeveloped lands and sites in need of regeneration within the draft Development Plan settlement boundary which are consistent with compact growth and are sequentially preferable to the subject lands. Further, given the relatively limited number of residential units (610) targeted for the 54 settlements within the Rural Areas (Settlements) tier under the core strategy, and the area of land available within the Development Plan settlement boundary, the Office considers there is sufficient development land to accommodate anticipated growth.

[4] The two submissions are attached to the submission to the Office by Councillor Noel Jordan, which include maps of the land concerned and alleged development constraints.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(ix) in light of the policy and legislative requirements identified.

Part 2(b)(x) MA 21(b).7, parts B and C, Creeslough, Settlement Frameworks i.e. the land subject of part C reverts to Amenity Area

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of part B only, and to '*allow removal of the 'Amenity' area zoning contrary to the Draft Direction*' in respect of the land the subject of part C.

The reasons stated by the Chief Executive for not reverting to the draft Development Plan to include the Amenity Area objective on the land the subject of part C state that

> *after the date of issue of the CE Report on the Proposed MAs, funding … was approved for Creeslough Community Regeneration Project under the … RRDF …* [which has] *a total value of €13,529,935* [and] *will deliver vital community infrastructure and facilities on an existing community site in the Village Centre, including a new central hub for community life. For this reason, the reservation of the subject lands, which lands are in private ownership and of only modest amenity value, is no longer warranted*.

One submission was also received by the Planning Authority opposing this part of the draft Direction in respect of the land the subject of part C.

The Office accepts the reasons given by the Chief Executive and recommends a minor amendment to the final Direction to omit part 2(b)(x) MA 21(b).7 in respect of the land the subject of part C only.

The Chief Executive's reasons for supporting part B relate to

> *the peripherality of the site / availability of other more centrally located sites to meet the housing needs of the village. These concerns were reflected in the Chief Executive's Report at Proposed Material Alterations stage and are consistent with the Minister's proposed course of action and rationale*.

One submission was received by the Planning Authority from the public in respect of site B, which submitted that the land is flat, serviced by fouls and storm sewerage and could connect into an existing footpath and road on contiguous land into the settlement, and thus is suitable for development. Further, the land is adjacent to existing residential development, is only 250m from Main Street and would provide an alternative to one-off housing.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed the draft Direction on the basis that the boundaries need to be expanded to take account of the RRDF funding; there's little option for developers due to topography; and pressure for childcare facilities and housing.

In relation to the reason that part B is serviced by wastewater infrastructure, this matter was considered in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again by the elected members.

In relation to the potential for a footpath connection, the Office accepts that there is potential to connect in through an existing residential development. While the Office accepts that the site is adjacent to existing residential development, the Office agrees with the assessment of the Chief Executive regarding the peripherality of the site and availability of other more centrally located sites to meet the housing needs of the village.

In relation to housing need and the provision of an alternative to one-off housing, the Office notes that there are extensive areas of undeveloped lands and sites in need of regeneration within the draft Plan boundary which are consistent with compact growth and are sequentially preferable to the subject lands.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction, as it relates to part 2(b)(x) MA 21(b).7, site B only, in light of the policy and legislative requirements identified.

Part 2(b)(xi) MA 21(b).8 Dunfanaghy, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of 2(b)(xi) on the basis that '*having regard to the*

peripherality of the site/availability of other more centrally located sites to meet the housing needs of the village', which concerns were reflected in the CE's Report (MA stage) and *'are consistent with the Minister's proposed course of action and rationale'.*

The Office received one submission from an elected member (Councillor Blaney) which, while accepting the Office's recommendation to not extend the Development Plan settlement boundary, proposes that part of the site concerned be developed for a caravan park / campervan park on the edge of the settlement to prevent traffic congestion within a town centre site.

One submission was received from TII which supports the draft Direction for the same reasons as detailed in respect of part 2(b)(viii), Bruckless.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed the draft Direction for the reason that the land is within safe walking distance of the village and should be considered for affordable housing for local residents as there is a lack of land supply for residential development in the village.

In relation to the reason that the lands should facilitate a caravan / campervan park, the Office notes that there is no tourism policy or objective relating to the site in the adopted Development Plan that would limit use of the land for such uses. Under Chapter 21 of the adopted Development Plan, the Settlement Frameworks consists of lands that can be used for a variety of purposes. The Office must carry out its assessment and evaluation of the material amendment in this context.

In relation to the reason that the land is within safe walking distance of the village and should be considered for affordable housing, the Office agrees with the Chief Executive's assessment regarding the peripheral location of the land and the availability of more sequentially preferable sites to meet the housing needs of the village, notwithstanding that there is a public footpath along the public road to the west of the site.

Furthermore, the land extends along the national road network outside locations subject to a reduced 50–60 kph urban speed limit and the Office agrees with the assessment of the TII in this respect.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(xi) in light of the policy and legislative requirements identified.

Part 2(b)(xii) MA 21(b).12 Newtowncunningham, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction'* in respect of the Newtowncunningham, Settlement Frameworks on the basis that, in respect of site A:

> *The site is physically severed from the village by the N13 National Primary route, no significant urban development has occurred to the North of said road and there is currently limited safe pedestrian access over the N13 in the form of a traffic island. Furthermore, a substantial portion of the site lies within 50m of the N13 and there is no established building line closer to the N13 at this location and development within said setback would be precluded by Policy TP-13 of the CDP. In addition, the site lies entirely within the HEFS Flood Zone A and Flood Zone B. The comments of Cllr. P. Canning in support of deleting this zoning are noted.'*

And, in respect of site B:

> *The suggestion of Cllr. P. Canning to reduce the site to approximately 1 acre for the purposes of regeneration are noted. However, it is respectfully submitted that this cannot be supported on the basis of: the materiality of such a change (ie. reducing the site from approx. 4 hectares to 1 acre), and uncertainty around the optimum location of such a site in the context of the 'Future Newtown' regeneration project. Furthermore, it should be noted that the broad policy framework of the CDP would support the principle of appropriate regeneration projects for the centre of the settlement in any case.*

The Office received one submission from an elected member (Councillor Canning) which accepts the Office's rational for its recommendation in respect of sites A and B, but requests that a portion of site B (which he refers to as site C) is further investigated to enable a town park for the benefit of town centre enhancement, and which would be acceptable in the flood plain and further from the national road.

One submission was received from TII which supports the draft Direction for the same reasons as detailed in respect of part 2(b)(viii), Bruckless.

As set out in the CE's Report, at the Plenary Council Meeting the elected members supported the draft Direction in respect of site A and submitted that the site subject of site B should be amended to be set back from national road to provide scope for regeneration of the town centre.

The Office agrees with the Chief Executive's assessment, including the response to the elected member's suggestions referred to above. The Office also agrees with the assessment of TII in respect of the impact on the national road network outside of the 50-60kph limit.

The Office welcomes the support in respect of site A and, in respect of site B, is satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(xii) in light of the policy and legislative requirements identified.

Part 2(b)(xiii) MA 21(b).14 Kilmacrennan, Settlement Frameworks

The Chief Executive recommends that the Minister '*delete the subject site as per the Draft Direction*' in respect of the Kilmacrennan, Settlement Frameworks on the basis that:

> *(1) the peripherality of the site/availability of other more centrally located sites to meet the housing needs of the village; and (2.) the presence of the designated Proposed Natural Heritage Area and limited vehicular access to the site*

which concerns were reflected in the CE's Report (MA stage) and *'are consistent with the Minister's proposed course of action and rationale'.*

No submissions were received by the Planning Authority from elected members or the public in respect of this part of the draft Direction.

A submission was received from TII in support of this part, for the same reasons as detailed in respect of part 2(b)(viii), Bruckless.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed the draft Direction in respect of this part for the reason that the material alteration would provide for housing need in the area and that the site is unsuitable for development with regard to public infrastructure.

In relation to the housing need in the area, the Office agrees with the Chief Executive's assessment regarding the peripheral location of the land, which is largely outside the CSO settlement boundary, and the availability of more sequentially preferable sites to meet the housing needs of the village.

In relation to public infrastructure, the Office notes that Uisce Éireann's submission (MA stage) identifies the settlement as having inadequate public wastewater treatment capacity. However, the Office considers TII's submission in respect of the impact on the national road network outside of the 50-60kph limit not to be directly applicable to the subject site.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(xiii).

Part 2(b)(xiv) MA 21(b).9 part B Fahan, Settlement Frameworks and Part (2)(b)(xv) MA 21(a).3 Policy SP-P-xx

The Chief Executive recommends that the Minister '*allow the inclusion of the subject lands within the boundary … contrary to the Draft Direction'* in respect of the extension to the Fahan settlement boundary to include lands at Fahan Marina and its environs, and that the Minister '*allow … the inclusion of the policy contrary to the Draft Direction'* in respect of policy SP-P-xx to facilitate a hotel and marina leisure tourism development at Fahan Marina and environs.

The reasons given by the Chief Executive state that while the conservation observations / recommendations of the DHLGH (NPWS) in support of the draft Direction are noted, *'the proposal under consideration is at the policy level, and the assessment contained in the NIR is considered to be appropriate for this level, contrary to the views of the Department'* and therefore

the additional rationale set out in the Chief Executive's Report at Proposed Material Alterations stage remains appropriate, i.e. that having regard to the qualifying interests of the Lough Swilly SAC, it is considered that the principle of a localised marina-type development should not be precluded at this location; furthermore, these qualifying interests need not necessarily preclude the provision of an on-site treatment facility, which works would be consistent with DCC policy, given the single-owner model of the marina.

No submission was received by the Planning Authority from either elected members or the public in respect of these parts. However, as set out in the CE's Report, at the Plenary Council Meeting the elected members opposed these parts of the draft Direction on the basis that: a hospitality type development has merit for the village, for the Inishowen Peninsula and for Derry City; much needed WWT infrastructure investment is too far down the line; and local knowledge suggests there is interest to pursue such development.

One submission was received from the DHLGH (NPWS) supporting the draft Direction in respect of these parts on the basis that:

- the NIR conclusion that '*there would be no 'adverse effect on the integrity after mitigation*' is not a complete, precise or definitive finding, and reasonable scientific doubt remains as to the adverse effects of tourism development at Fahan;
- the proposed objective raises concerns due to potential risk of trampling and visual disturbance caused by construction and operation on sensitive coastal habitats and species;
- in the absence of existing wastewater treatment capacity, it cannot be concluded that there is no risk of adverse effects on the integrity of European sites within proximity to the proposed development, in the absence of an objective assessment; and
- any likely significant effects of the proposed objective would need to be fully assessed and address site-specific mitigation measures, whereas the mitigation measures proposed in the NIR are not deemed appropriate with

such site-specific objectives and the conclusions in NIR are not supported by evidence that adverse effects will be avoided.

In relation to the reasons of the Chief Executive, these matters were previously addressed in the 31AM(8) Notice Letter, and the Office adopts the same rationale in response to those similar points raised again. Furthermore, the Office agrees with the assessment and conclusion of the NPWS, as set out in the CE's Report, which is consistent with the 31AM(8) Notice Letter.

In relation to the elected members' reasons that the benefits to the wider area of a hospitality type development has merit for the village and that there is interest to pursue such development, and that the WWT infrastructure is too far down the line, the Office does not consider that the reasons provide a sufficient basis to support the material alterations given the likely scale and impacts of a tourism development at Fahan; the location within an SAC and immediately adjacent to an SPA; and the fact that it is in an area without wastewater treatment capacity, 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 tourism development at Fahan on the European sites in question.

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(b)(xiv) and part 2(b)(xv) in light of the policy and legislative requirements identified.

In response to Part 2(c) to delete policy T-P-12 (b) and (c) and associated text in section 8.1.3.1, and Part 2(d) to amend policy T-P-12(a)

The Chief Executive recommends that the Minister '*make the Plan with the Draft Direction*' in respect of Part 2(c), and Part 2(d), but subject to the amendment suggested below.

The Chief Executive states that

> *During preparation of the Draft Plan, in carrying out baseline studies the Council Executive identified certain 'lightly trafficked' sections of the N56 where exemptions to the general national policy approach could be*

considered in accordance with Section 2.6(2) of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012). The Council entered into consultations with TII although these consultations were not concluded. Notwithstanding, it is hereby proposed that the Minister considers incorporating derogations into Policy T-P-12 for two sections of the N56 based on:

- the traffic counts showing the traffic volumes to be below, and projected to remain below for the next 20 years, 3,000 AADT;

- the fact that these sections predominantly serve structurally weak and relatively remote parts of County Donegal; areas that have suffered from population decline and where the Council is keen to put in place appropriate policy measures to meet National Strategic Objective number 3 of the National Planning Framework, which seeks 'Strengthened Rural Economies and Communities'. In terms of traffic volumes, all four sections are projected to remain below 3,000 AADT for the next 20 years. Please refer to Appendix B for relevant documentation.'

The Office received a submission from an elected member (Councillor McClafferty) opposed to these parts of the draft Direction on the basis that the current rules relating to planning on the N56 should be overturned and planning for access for families to the N56 should be allowed including to prevent emigration.

The Planning Authority received 14 submissions from members of the public on N56 on the basis that the will of the elected members should be upheld; families will not be able to build on their land, resulting in depopulation including in Gaeltacht areas contrary to policies to protect such areas; limited period access should be allowed for wind energy development; applications should be considered on their own merits; will affect over 40% of land area of the county; will stymie growth; a practical, pragmatic approach is required to development on N56 within road safety requirements; critical to permit development along tertiary roads, county roads and regional roads accessing onto N56 in a hybrid approach; and will sterilise lands along N56.

As set out in the CE's Report, at the Plenary Council Meeting the elected members opposed these parts of the draft Direction, largely repeating the issues raised in the public submissions. Additional points included that development can be facilitated by achieving adequate sight lines and safe access; national policy is not working in Donegal; can build service garages on N56; inequity as large developments may be exempt but not houses and discriminates against working classes; what proof is there of accidents on N56; should be allowed where there is an existing entrance and questions what intensification means.

Submissions were received from TII and NTA in support of the draft Direction, which state that their reasons are as per their submissions on the draft Development Plan and on the Material Alterations; and that the proposals included in T-P-12 and in supporting section 8.1.3.1 conflict directly with government policy included in the National Roads Guidelines and, in the case of the NTA, such proposals do not accord with the National Sustainable Mobility Policy.

The Office notes the modification proposed by the Chief Executive. However, while 'Exceptional Circumstances' provided for under section 2.6 of the National Roads Guidelines, provides that

> *the planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA*'.

While the Chief Executive's Report references consultation with TII, no agreement has been reached in respect of 'exceptional circumstances' as part of the plan preparation process and both TII and NTA are in support of the draft Direction as issued.

Furthermore, there has been no public consultation or environmental assessment of the derogations for the two sections of the N56 put forward by the Chief Executive and the Office considers that this matter would be more appropriately dealt with by a future variation to the Development Plan.

The agreement of exceptional circumstances, having followed the approach set out in the National Roads Guidelines, would also address many of these concerns and

reasons put forward by members of the public and the elected members as they relate to lightly trafficked sections of the N56 serving structurally weak and remote communities where a balance needs to be struck between the important transport functions of such roads and supporting the social and economic development of those areas, can be addressed through the agreement of exceptional circumstances having followed the approach set out in the National Roads Guidelines. However, the N56 between the Five Points Junction (Killybegs) and the Mountain Top Letterkenny extends for some 120km, and no evidence has been provided that the entirety falls within the above provisions of the Guidelines consistent with NPO 74 of the NPF, national strategic outcome NSO 2 and RPO 6.5 of the RSES, and the National Investment Framework for Transport in Ireland in terms of protecting the capacity and safety of the national roads network.

In response to the submissions, it is also important to point out that the draft Direction relates to new accesses or the intensification of existing access points onto national roads where the speed limit is greater than 60 kph, and not to existing tertiary roads, county roads and regional roads accessing onto N56. Furthermore, the Office notes that Policy T-P-12(a) makes provision for development of national and regional strategic importance under certain circumstances.

As a point of clarification, the 31AM(8) Notice Letter refers to part of the N56 to the northwest of Letterkenny being identified as an Arterial National Secondary Road under TII's strategy to enable *Project Ireland 2040* (National Roads 2040) instead of as a Collector Road where safety and route consistency is a priority, albeit that alternative routes are available. The Office is satisfied that this does not materially affect the assessment or conclusions set out in the 31AM(8) Notice Letter, or in this notice letter to you under section 31AN(4).

The Office is therefore satisfied that no or no adequate reasons have been provided related to the proper planning and sustainable development of the area to amend the draft Direction as it relates to part 2(c) and 2(d) in light of the policy and legislative requirements identified.

Recommendation

In light of the above and for the reasons given in the 31AM(8) Notice Letter dated 12th June 2024, the Office remains of the view, as set out in the 31(AM)(8) Notice Letter, that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

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.

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,

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Niall Cussen

Planning Regulator

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