



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

12th June 2024

Alan Dillon TD

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 31AM(8) of the Planning and Development Act
2000 (as amended) – Donegal County Development Plan 2024-2030**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Donegal County Development Plan 2024-2030 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator (the 'Office') pursuant to section 31AM(8) of the *Planning and Development Act 2000* (as amended) (the 'Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with recommendations of the Office, which required specific changes to the Development Plan:
 - i. to ensure consistency with NPO 3c, RPO 3.2 and/or NSO and Regional Growth Ambitions for compact growth, NPO 72a-c tiered approach to zoning and having regard to the policy and objective for settlement capacity audits under the Development Plans, Guidelines for Planning Authorities (2022) ('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*

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(‘Climate Action Plan’) and the *Climate Action and Low Carbon Development Act 2015*, as amended, (‘the Climate Act’) and having regard to the policy and objective for sequential zoning under the Development Plans Guidelines, the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (‘Flood Guidelines’) and the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) (Spatial Planning and National Roads Guidelines).

Specifically, the Development Plan zones land for residential development in peripheral and / or non-sequential locations, and/or are not serviced or serviceable within the plan period in Buncrana and Ballybofey / Stranorlar that does not support compact growth; the co-ordination of land use zoning infrastructure and services under the tiered approach to zoning; the sequential approach to zoning; and would not facilitate sustainable mobility.

Further, the Development Plan includes additions, extensions and amendments to the Settlement Frameworks for Carrick/ An Charrig, Bruckless, Mouncharles, Cresslough, Dunfanaghy, Moville, Newtowncummingham, and Kilmacrenna in peripheral and / or non-sequential location, and / or outside the CSO 2016 Settlement Boundary, and / or with no or no adequate infrastructure, and / or in areas at risk of flooding, and / or on the national road network, that does not support compact growth; the co-ordination of land use zoning infrastructure and services under the tiered approach to zoning; the sequential approach to zoning; the requirement to not zone land at risk of flooding and to maintain the strategic capacity and safety of the national road network; and would not facilitate sustainable mobility;

- ii. to ensure consistency with NPO 74 to align the NPF and the NDP through the delivery of national strategic outcomes (NSOs) including NSO 1 compact growth, NPO 11 to encourage more people and generate more jobs and activity in towns and villages and RPO 3.13 to support employment and service provision in smaller and medium sized

towns, NPO 72a-c tiered approach to zoning, section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies and the obligations under the Climate Action Plan and the Climate Act, and having regard to the evidence-based approach to employment zoning under section 6.2.5 of the Development Plans Guidelines.

Specifically, the Development Plan zones land as Business Enterprise in peripheral and unserved locations largely outside the CSO boundaries, and which do not support compact growth, and the co-ordination of land use zoning infrastructure and services under the tiered approach to zoning, and would encourage car dependant development;

- iii. to ensure consistency with NPO 57 which requires implementation of the Flood Guidelines.

Specifically, the Development Plan includes lands zoned for residential use in Buncrana which is almost fully located within Flood Risk Zone A and B;

- iv. to ensure consistency with: NPO 74 to align the NPF and the NDP through the delivery of NSOs including NSO 2 Enhanced Regional Accessibility, RPO 6.5 to maintain the strategic capacity and safety of the national road network and having regard to sections 2.5 and 2.6 of the Spatial Planning and National Roads Guidelines to maintain the capacity, efficiency and safety of national roads, avoiding the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply.

Specifically, the Development Plan includes Policy T-P-12 (and associated text in section 8.1.3.1) which seeks to permit new accesses to an extensive section of the N56 National Secondary Road for one off rural housing and includes a condition to the restriction on development which would result in the intensification of existing access points;

- v. to ensure consistency with NPO 75 to ensure that all plans are subject to the relevant environmental assessment requirements, NPO 41a to

ensure that Ireland's coastal resource is managed to sustain its physical character and environmental quality, and NPO 63 and 72a-c regarding the lack of adequate services and sustainable use of water resources and water services.

Specifically, the Development Plan extends the settlement boundary for Fahan to within the Lough Swilly SAC and immediately adjacent to the Lough Swilly SPA, and includes Policy SF-P-xx to facilitate a hotel and marina leisure tourism development at this location and in an area without wastewater treatment capacity. Furthermore, the conclusion of the Strategic Environmental Assessment (SEA) Environmental Report on the impacts of the material alterations on biodiversity, fauna and flora is inconclusive, and the NIR concludes that there would be no '*adverse effect on the integrity after mitigation*', despite that no site specific mitigation is identified or assessed. This is inconsistent with NPO 75;

- b) as a consequence of the above, the Development Plan made by Donegal County Council ('the Council') fails to set out an overall strategy for the proper planning and sustainable development of the area concerned; and
- c) the use by you of your functions to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act (the '31AM(8) notice letter').

1. Background

1.1 Draft Donegal County Development Plan

The Draft Donegal County Development Plan 2024-2030 (the draft Plan) was on public display from 4th August 2023 to 13th October 2023.

A statement was appended (as Appendix 1) to the draft Plan as required under section 28(1A)(b) of the Act, concerning the implementation of the Ministerial Guidelines, which was not amended at material alteration stage.

The statement did not acknowledge any departure from the provisions of section 28 guidelines apart from the Spatial Planning and National Roads Guidelines. It did not include any information to demonstrate that the planning authority had formed the opinion that it was not possible to implement certain policies and objectives of the Minister contained in any relevant guidelines, as outlined in further detail below, and did not provide reasons for not implementing such policies and objectives. Such information and reasons are required where section 28(1B)(b) applies.

The Office made a submission to the draft Plan on 13th October 2023 containing nineteen (19) recommendations and five (5) observations.

The Office's submission to the draft Plan identified a number of issues for the planning authority to address to align the draft Plan with current national and regional policy and the Act.

Specifically, issues raised related to:

- Recommendation 1: Settlement Hierarchy (Letterkenny Regional Growth Centre)
- Recommendation 2: Settlement Hierarchy
- Recommendation 3: Core strategy and zoning for residential use
- Recommendation 4: Core strategy details
- Recommendation 5: Zoning of land for residential use: Buncrana
- Recommendation 6: Zoning of land for residential use: Ballybofey / Stranorlar
- Recommendation 7: Zoning of land for residential use: Bundoran
- Recommendation 8: Zoning of land for residential use: Bunbeg-Derrybeg, Milford and Lifford
- Recommendation 9: Infrastructure Assessment / Settlement Capacity Audit
- Recommendation 10: Regeneration strategy
- Recommendation 11: Regeneration and opportunity sites
- Recommendation 12: Traveller Accommodation
- Recommendation 13: Rural Housing Policy

- Recommendation 14: Business Enterprise Zoning
- Recommendation 15: Access to National Roads
- Recommendation 16: Flood Risk Management
- Recommendation 17: Public rights of way
- Recommendation 18: Environment, Heritage and Amenities
- Recommendation 19: Natural Landscape and Biodiversity

Subsequently, the planning authority sent a section 12(7) notice letter dated 8th March 2024 advising the Office of the proposed amendments to the draft Plan. The planning authority also sent a section 12(5)(aa) notice letter dated 2nd April 2024 ('12(5)(aa) notice letter'), setting out the recommendations of the Office which the planning authority had decided not to comply with, and the reasons and justification for its decision.

The 12(5)(aa) notice letter provided reasons for not complying with Recommendations 2, 5, 6, 7, 10, 11, 14 and 15, in part or in full. The Office noted the proposals to address Recommendation 1, Recommendation 4, Recommendation 10 and Recommendation 15(iv) by way of non-material minor modification at adoption.

1.2 Material Alterations to the Draft Donegal County Development Plan 2024-2030

The elected members, having considered the draft Plan and the Chief Executive's Report on submissions to the draft Plan dated January 2024 (CE's Report draft stage), resolved to amend the draft Plan. The Material Alterations to the draft Plan (material alterations) were on public display from 8th March 2024 to 5th April 2024.

The material alterations included a number of changes, including:

- a series of individual material alterations to residential land use zoning objectives;
- a series of additions, extensions and amendments to several of the Settlement Frameworks;
- a series of individual material alterations to Business Enterprise;

- an individual material alteration to re-zone land in flood zone A and B from Open Space and Recreation to New Residential Phase; and
- the extension of the settlement boundary for Fahan and the introduction of a policy to facilitate the sustainable provision of a hotel and marina leisure tourism development at Fahan Marina and its environs.

The Office made a submission on 5th April 2024 on the material alterations containing eight (8) recommendations and no observations.

The Office's recommendations at material alterations stage included:

- MA Recommendation 1 – Housing targets and zoned land requirements
- MA Recommendation 2 – Zoning of land for residential use: Buncrana
- MA Recommendation 3 – Zoning of land for residential use: Ballybofey/Stranorlar
- MA Recommendation 4 – Zoning of land for residential use: Bundoran
- MA Recommendation 5 – Settlement Frameworks
- MA Recommendation 6 – Fahan
- MA Recommendation 7 – Wastewater Supply Infrastructure
- MA Recommendation 8 – Flood Risk Management

1.3 Adopted Donegal County Development Plan 2024-2030

The elected members of the Council resolved to make the Donegal County Development Plan 2024 – 2030 on 16th May 2024.

Subsequently, the planning authority sent a section 31AM(6) notice letter dated 24th May 2024 ('31AM(6) notice letter') to the Office advising of the making of the Development Plan and specifying the recommendations of the Office that had not been complied with or the aspects of the Development Plan inconsistent with the recommendations of the Office.

The section 31AM(6) notice letter stated that MA Recommendations 1, 2, 3, 4, 5 and 6 had not been complied with in full or in part, and provided a summary of the Chief

Executive's reasons and / or the elected members' reasons for not complying with the aforementioned recommendations.

As outlined above, the section 12(5)(aa) notice letter provided reasons for not complying, in full or in part, with Recommendations 2, 5, 6, 7, 10, 11, 14 and 15.

In respect of MA Recommendations 1, 2, 3, 4, 5, 6 and (indirectly) 8, the Chief Executive has set out the reasons for not-complying with the recommendations of the Office in the section 31AM(6) notice letter.

In relation to MA Recommendations 1 and 4, the Office accepts the reasons given by the Chief Executive and / or the elected members.

The outstanding matters, therefore, are as follows:

- Residential zoning objectives and material alterations:
 - Recommendation 5 and MA Recommendation 2 (Buncrana)
 - Recommendation 6 and MA Recommendation 3 (Ballybofey / Stranorlar);
- Settlement frameworks, MA Recommendation 5
- Business/ Enterprise zoning objectives, Recommendation 14
- Flood risk management, MA Recommendation 8.
- Exceptional circumstances for access to national roads, Recommendation 15
- Boundary extension and policy for hotel and marina leisure tourism at Fahan, MA Recommendation 6

These outstanding matters are considered in more detail below.

1.4 Residential land use zonings

1.4.1 Buncrana

The draft Plan included a number of residential zoning objectives in Buncrana which were located in peripheral locations contrary to compact growth, and/or the sequential approach to zoning, and / or the co-ordination of land use zoning infrastructure and services, and which would encourage and reinforce a pattern of car-based trips.

Recommendation 5 of the Office’s submission to the draft Plan required the omission of two New Residential Phase 1 zoning objectives, in addition to eight New Residential Phase 2 zoning objectives as follows:

Recommendation 5 - Zoning of land for residential use: Buncrana

Having regard to the core strategy of the draft P, to the provision of new homes at locations that can support compact and sustainable development, and, in particular, to:

- section 10(2)(h) of the *Planning and Development Act 2000*, as amended (the Act), concerning the renewal of areas, having regard to the core strategy;
- section 10(2)(n) of the Act, concerning the promotion of sustainable settlement and transport strategies;
- the *Climate Action and Low Carbon Development Act 2015*, as amended, including the National Climate Objective and the mandatory target to reduce greenhouse gas emissions by 51% over the 2018 level and to achieve a climate neutral economy by 2050;
- the *Climate Action Plan 2023* target to reduce vehicle kilometres travelled and the actions to achieve same and the Goals 5 and 9 of the *National Sustainable Mobility Policy (2022)*, encourage modal shift and better integrate land use and transport;
- NPO 3c and RPO 3.2 compact growth;
- NPO 6, NPO 16 and NPO 35, and RPO 3.4, concerning the regeneration, rejuvenation and intensification of towns and villages and their cores;
- NPO 72a-c and associated NPF Appendix 3, tiered approach to zoning; and
- the *Development Plans Guidelines for Planning Authorities (2022)*, policy and objective for settlement capacity audits and associated infrastructural capacity assessment; and the policy and objective for the sequential approach to zoning; and the policy and objective not to de-zone pre-existing zoned serviced land,

the planning authority is required to:

- (i) omit the following proposed land use zoning objectives:
 - (a) Phase 1 New Residential NR 1.11 and NR 1.12;
 - (b) Phase 2 New Residential NR 2.13, 2.14, 2.15, 2.16, 2.17, 2.18, 2.19, 2.20 and associated policy GEN-H-3.
- (ii) Omit proposed Phase 1 New Residential lands that are:
 - (a) not necessary to ensure sufficient lands are available to implement the core strategy, having regard to the core strategy as revised in accordance with the recommendations of the Office;
 - (b) not preferably located, having regard to the implementation of effective compact growth and the sequential approach; or
 - (c) not serviced or serviceable over the proposed plan period.

At material alterations stage the amended draft Plan included a number of residential zoning objectives located on the periphery of Buncrana, which sites raised similar concerns as those identified in Recommendation 5 of the Office's submission to the draft Plan.

MA Recommendation 2 of the Office's submission to the material alterations required the Development Plan to be made without six material amendments which added New Residential Phase 1 zonings to Buncrana as follows:

MA Recommendation 2 - Zoning of land for residential use: Buncrana

Having regard to the core strategy of the draft Plan and associated material alterations, to the provision of new homes at locations that can support compact and sustainable development, and, in particular, to:

- section 10(2)(h) of the *Planning and Development Act 2000*, as amended (the Act), concerning the renewal of areas, having regard to the core strategy;

- section 10(2)(n) of the Act, concerning the promotion of sustainable settlement and transport strategies;
- the *Climate Action and Low Carbon Development Act 2015*, as amended and *Climate Action Plan 2024* and the *National Sustainable Mobility Policy (2022)*;
- NSO and Regional Growth Ambitions for compact growth;
- NPO 6, NPO 16 and NPO 35, and RPO 3.4, concerning the regeneration, rejuvenation and intensification of towns and villages and their cores;
- NPO 72a-c and associated NPF Appendix 3, tiered approach to zoning; and
- the *Development Plans, Guidelines for Planning Authorities (2022)*, policy and objective for settlement capacity audits and associated infrastructural capacity assessment; and the policy and objective for the sequential approach to zoning; and the policy and objective not to de-zone pre-existing zoned serviced land,

the planning authority is required make the Plan without the following proposed material alterations and all associated supporting text:

- (i) MA 18(b).10
- (ii) MA 18(b).11
- (iii) MA 18(b).12
- (iv) MA18(b).13
- (v) MA18(b).15
- (vi) MA18(b).16

At draft Plan stage, the zonings of concern included two New Residential Phase 1 zoning objectives, NR 1.11 and NR 1.12, under part (i)(a), and a New Residential Phase 2 zoning objective, NR 2.16, under part (i)(b).

In respect of NR 1.11, NR 1.12 and NR 2.16, the Chief Executive recommended compliance with the Office's recommendation on the basis that the '*Executive did not propose sites NR 1.11 and NR 1.12 for the same reasons as those set out in the OPR recommendation*', and agreed with the '*OPR's rationale for site NR 2.16 having*

regard to the availability of a sufficient supply of more favourably-located sites as identified' in the CE's Report (draft stage).

The elected members rejected the Chief Executive's recommendation and made the Development Plan with NR.11 and NR 1.12, for the following reasons:

- NR 1.11 and NR 1.12 are serviced and ready to go;
- Part V housing proposals were with the council; and
- planning permission had been granted on adjacent sites.

The Office notes there is a grant of outline planning permission for a housing development on that part of NR 1.11 zoned residential under the County Donegal Development Plan 2018-2024. There is no record on Donegal's online planning search database of any relevant recent planning permission on NR 1.12, including Part V housing, and planning decisions on sites in the vicinity are not considered relevant.

In relation to NR 1.11, it was not included in the Settlement Capacity Audit in the CE's Report (draft stage), however, as noted above, the northwestern part of the lands is zoned Residential under the County Donegal Development Plan 2018-2024. Therefore, having regard to the policy and objective under section 4.4.1 of the Development Plan Guidelines, the Office considers that the previously zoned portion of the site should not be de-zoned.

NR 1.12 was not zoned Residential under the County Donegal Development Plan 2018-2024, and the aforementioned policy and objective does not therefore apply.

In respect of part (i)(b) of Recommendation 4, the Office accepts the zoning objectives as amended at material alteration stage in relation to NR 2.13, 2.14, 2.15, 2.17, 2.18, 2.19, 2.20, which were adopted as part of the plan.

In relation to NR 2.16, the material alterations included a proposal to rezone NR 2.16 from New Residential Phase 2 to Local Environment (MA 18(b).17). The elected members, however, made the Development Plan without this material alteration, and zoned the lands for New Residential Phase 1 as per the draft Plan, for the following reasons:

- the site would complement Cockhill Neighbourhood Centre which contains a church, national school, pre-schools, filling-station and shop and hairdressers; and
- the OPR had not referenced the unprecedented influx of Ukrainian refugees into Buncrana and the levels of international protection applicants.

In this regard, while NR 2.16 is proximate to the small level of services located at Cockhill, the area is located on the periphery of the town and further development of the scale facilitated by this zoning objective would be contrary to the compact and sustainable growth of the town, and where there is a sufficient supply of more sequentially preferable zoned land consistent with the core strategy.

In relation to lands to the north of Buncrana, Uisce Éireann's submission also stated that *'Depending on the extent of development on the residential zoned sites to the north of the settlement, an upgrade of a section of trunk sewer in the Oakfield Close area may be required however it is envisaged this could be developer-led.'*

In respect of MA 18(b).10, MA 18(b).11, MA 18(b).12, MA18(b).13, MA18(b).15, and MA18(b).16 the CE's Report on material alterations stage dated May 2024 (CE's Report MA stage) recommended to make the Development Plan without same *'based on their peripherality, inconsistency with compact/sequential growth policy direction, the availability of residential sites at more compact / accessible locations, the need for significant investment in active travel infrastructure to service some of the sites and in some case, the likely water / wastewater upgrade requirements'.*

The elected members rejected the Chief Executive's recommendation and made the Development Plan with all of the material amendments for the following reasons:

- MA 18(b).10: *'There is a live planning (permission) on this site, all services are available, and it is surrounded by houses.'*
- MA18(b).11 referred to in OPR rec 8 also: *'The site is located within an established residential area, and the flooding concerns can be addressed.'*
- MA 18(b).12: *'The site is fully serviced. It is a small development, and the developer is keen to progress development on this site.'*
- MA 18(b).13: *'Development has started on this site.'*

- MA 18(b).15: *'Site is very close to a large development. There is an issue with the sewer (distance to connect) but the developer is satisfied the issues can be overcome.'*
- MA 18(b).16: *'Developer has already carried out a large development and subject site would be the second phase. Noted that 'there is not one spare house to rent or live in in Bunrana, and here we have a developer who wants to start tomorrow to do the development.'*

In relation to MA 18(b).10, the Office accepts the reasons of the elected members for making the Development Plan with this material amendment.

In relation to MA 18(b).11, the Office acknowledges that the site is located within an established residential area and it is likely to be serviced or serviceable. However, flood risk issues arise in respect of this site and are addressed under Flood Risk Management (MA Recommendation 8) below.

In relation to MA 18(b).12, 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), although there is a public footpath and lighting along the opposite side of the main road. Notwithstanding, the land is located in a peripheral location some 1.2km from the town centre and represents a piecemeal and non-sequential approach to development.

In relation to MA 18(b).13, the Office notes that there is no extant planning permission on the site, notwithstanding the reason given by the members that development has commenced on site.

In relation to MA 18(b).15 and MA 18(b).16, the Office acknowledges the existing residential estate at Mulberry Avenue to the east of the town. This development is, however, remote from the main settlement and predates current national and regional policy for compact and sustainable patterns of development. The Office does not consider that it provides a sufficient policy basis to support the zoning of additional lands on the eastern periphery of the town, and in an area without footpaths or public lighting, and where there is a sufficient supply of more sequentially preferable zoned land consistent with the core strategy.

In this respect, the Office notes that the core strategy table, as revised at material alteration stage, identifies the requirement for c.19ha¹ of residential land in Buncrana, inclusive of the 'additional provision' headroom. The Office estimates that the Development Plan as adopted provides for c.48ha. Even accounting for the omissions as recommend in this notice letter, the adopted Development Plan would provide for c.38ha, which is well in excess of that required to implement the core strategy and the needs identified by the elected members. Therefore, there is no justification to retain the aforementioned sites to meet housing demand.

The Office also notes that the elected members state, regarding MA 18(b).15, that there is an issue with the sewers (distance to connect) and the reason given in the CE's Report (MA stage) for downzoning NR 1.8 at MA stage (adjacent to MA 18(b).15 to the west / town-side) was absence of footpath. The Uisce Éireann submission (MA stage) states that both sites would require an extension to the sewer network of 250-350m and 200m respectively. It is also likely that any new development would require a new pumping station.

The subject sites are all therefore located in peripheral or highly peripheral, non-sequential locations, which do not have regard to the policy and objective under section 6.2.3 of the Development Plans Guidelines to prioritise the most centrally located development sites in a settlement first.

Sites NR 1.11 and NR 1.12 largely fall outside the CSO 2016 Settlement Boundary and are therefore inconsistent with NPO 3 and RPO 3.2 compact growth and would undermine the achievement of the NSO for compact growth. The other sites are inconsistent with the NSO and Regional Growth Ambition for compact growth.

The zoning objectives and material alterations are also largely unserved, and the absence of an infrastructure capacity assessment or settlement capacity audit for the material alterations means that the Development Plan is inconsistent with NPO 72a-c tiered approach to zoning and does not have regard to the policy and objective that zonings are informed by a settlement capacity audit under section 6.2.1 of the Development Plans Guidelines.

¹ The Core Strategy exercise does not take account of potential housing yield on brownfield / infill lands.

Further, the highly peripheral location of the sites means they will not facilitate, support or encourage active travel and will therefore no contribute to mandatory objectives for sustainable settlement and transport strategies under 10(2)(n) of the Act; will conflict with the Climate Action Plan and with associated goals in the National Sustainable Mobility Policy to reduce vehicle kilometers travelled, and with the Greenhouse Gas reduction targets under the Climate Act.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the planning authority has decided not to implement aforementioned national and regional and regional policy or mandatory objectives for sustainable settlement and transport strategies, nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

1.4.2 Ballybofey / Stranorlar

Similar to Buncrana, the draft Plan also included a number of residential zoning objectives in Ballybofey / Stranorlar which were located in peripheral locations contrary to compact growth, and/or the sequential approach to zoning, and/or the co-ordination of land use zoning infrastructure and services, and which would encourage and reinforce a pattern of car-based trips.

Recommendation 6 of the Office’s submission to the draft Plan required the omission of two New Residential Phase 2 zoning objectives as follows:

Recommendation 6 - Zoning of land for residential use: Ballybofey / Stranorlar

Having regard to the core strategy of the draft Plan, to the provision of new homes at locations that can support compact and sustainable development, and, in particular, to:

- section 10(2)(h) of the *Planning and Development Act 2000*, as amended (the Act), concerning the renewal of areas, having regard to the core strategy;

- section 10(2)(n) of the Act, concerning the promotion of sustainable settlement and transport strategies;
- the *Climate Action and Low Carbon Development Act 2015*, as amended, including the National Climate Objective and the mandatory target to reduce greenhouse gas emissions by 51% over the 2018 level and to achieve a climate neutral economy by 2050;
- the *Climate Action Plan 2023* target to reduce vehicle kilometres travelled and the actions to achieve same and the Goals 5 and 9 of the *National Sustainable Mobility Policy (2022)*, encourage modal shift and better integrate land use and transport;
- NPO 3c and RPO 3.2 compact growth;
- NPO6, NPO16, NPO 35 and RPO 3.4 concerning the regeneration, rejuvenation and intensification of towns and villages and their cores;
- NPO 72a-c and associated NPF Appendix 3, tiered approach to zoning; and
- the *Development Plans, Guidelines for Planning Authorities (2022)*, policy and objective for settlement capacity audits and associated infrastructural capacity assessment; the policy and objective for the sequential approach to zoning; and the policy and objective not to de-zone pre-existing zoned serviced land,

the planning authority is required to:

- (i) omit the following proposed land use zoning objectives:
 - (a) Phase 2 New Residential NR 2.1 and NR 2.2 and associated policy GEN-H-3;
- (ii) omit proposed Phase 1 New Residential lands that are not serviced, and / or omit consideration for residential use from the Opportunity Site designation(s), that are:
 - (a) not necessary to ensure sufficient lands are available to implement the core strategy, having regard to the core strategy as revised in accordance with the recommendations of the Office; and

(b) not preferably located, having regard to the implementation of effective compact growth and the sequential approach (in this regard phase 1 NR 1.7 and NR 1.12 are considered least consistent with the sequential approach);

At material alterations stage the amended draft Plan included a number of additional residential zoning objectives located on the periphery of Ballybofey / Stranorlar, which sites raised similar concerns as those identified in Recommendation 6 of the Office's submission on the draft Plan.

MA Recommendation 3 of the Office's submission to the material alterations required the Development Plan to be made without two material amendments which added New Residential Phase 1 zonings to Ballybofey/Stranorlar as follows:

MA Recommendation 3 - Zoning of land for residential use: Ballybofey/Stranorlar

Having regard to the core strategy of the draft Plan and associated Material Alterations, to the provision of new homes at locations that can support compact and sustainable development, and, in particular, to:

- section 10(2)(h) of the *Planning and Development Act 2000*, as amended (the Act), concerning the renewal of areas, having regard to the core strategy;
- section 10(2)(n) of the Act, concerning the promotion of sustainable settlement and transport strategies;
- the *Climate Action and Low Carbon Development Act 2015*, as amended, the *Climate Action Plan 2024* and the *National Sustainable Mobility Policy (2022)*;
- NPO 3c, RPO 3.2, NSO and Regional Growth Ambition for compact growth;
- NPO 6, NPO 16 and NPO 35, and RPO 3.4, concerning the regeneration, rejuvenation and intensification of towns and villages and their cores;
- NPO 72a-c and associated NPF Appendix 3, tiered approach to zoning; and

- the *Development Plans, Guidelines for Planning Authorities (2022)*, policy and objective for settlement capacity audits and associated infrastructural capacity assessment; and the policy and objective for the sequential approach to zoning; and the policy and objective not to de-zone pre-existing zoned serviced land,

the planning authority is required make the Plan without the following proposed material alterations and all associated supporting text:

(i) MA 19(b).1

(ii) MA 19(b).2

At draft plan stage, the zonings of concern included New Residential Phase 2 zoning objective NR 2.2 and associated policy GEN-H-3. At material alterations stage the zonings of concern included an additional New Residential Phase 2 zoning (from Rural Agriculture) under MA 19(b).2. The Office accepted the reasons and recommendations of the Chief Executive in respect of NR 2.1 and it is therefore appropriate to retain the associated policy.

In respect of NR 2.2, the CE's Report (draft stage) did not agree with the Office's recommendation and recommended that the Development Plan be made with the zoning objective. The elected members made the Development Plan with the zoning objective in accordance with the Chief Executive's recommendation. The reasons given in the 12(5)(aa) notice letter state that this is a serviced and developable site previously zoned in the Seven Strategic Towns Local Area Plan 2018 and its retention therefore in accordance with section 4.4.1 of the Development Plan Guidelines.

The Office acknowledges that the site was previously zoned. However, the Settlement Capacity Audit include in the CE's Report (MA stage) clearly states that site NR 2.2 is part serviced and requires a 90m footpath extension and a 103m sewer extension. The policy and objective under section 4.4.1 of the Development Plan Guidelines to not de-zone previously zoned and serviced lands does not therefore apply.

In respect of site MA 19(b).2, the CE's Report (MA stage) recommended that the Development Plan be made without MA 19(b).2, *'based on site peripherality,*

inconsistency with compact / sequential growth, the availability of residential sites at more compact / accessible location, the need for a significant footpath extension to service the site, the likely water/wastewater upgrade requirements’.

The elected members rejected the Chief Executive’s recommendation and made the Development Plan with MA 19(b).2, for the following reasons:

- the difficulties the Council has acquiring land results in developer-led development, and
- the site is only 2 minutes away from the Finn Valley College (High School with enrolment of 352 students).

The Office appreciates the need for the Council to meet the housing needs of the county, particularly in relation to social and affordable housing. However, notwithstanding the proximity to the school, these lands are located in a peripheral location and the Chief Executive’s reasons for not zoning the site make clear that the site is not fully serviced and requires significant investment. The Uisce Éireann submission (MA stage) also states that depending on the scale of development, 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.

Furthermore, based on the core strategy figures, the omission of NR 2.2 (c.3ha) and MA 19(b).2 (c.2.3ha) would reduce the zoned area to c.30ha², well in excess of that determined by the planning authority in its core strategy as required (19.46ha³) to implement the core strategy.

NR 2.2 and MA 19(b).2 are therefore located in peripheral or highly peripheral, non-sequential locations, which do not have regard to the policy and objective under section 6.2.3 of the Development Plans Guidelines to prioritise the most centrally located development sites in a settlement first.

All of NR 2.2 and approximately two-thirds of MA 19(b).2 are located outside the CSO 2016 Settlement Boundary and are therefore inconsistent with NPO 3 and RPO

² 35.41-3-2.3=30.11ha.

³ This is inclusive of the potential brownfield yield. The area required area, net of yield on brownfield lands, is stated as 17.03ha. But for ease of understanding the gross figure is used.

3.2 compact growth and would undermine the achievement of the NSO for compact growth.

The subject sites also require significant water and wastewater infrastructure upgrades and extensions to footpaths and public lighting, inconsistent with NPO 72a-c tiered approach to zoning and does not have regard to the policy and objective that zonings are informed by a settlement capacity audit under section 6.2.1 of the Development Plans Guidelines.

Further, the highly peripheral location of the sites means they will not facilitate, support or encourage active travel and will therefore not contribute to mandatory objectives for sustainable settlement and transport strategies under section 10(2)(n) of the Act, will conflict with the Climate Action Plan and with associated goals in the National Sustainable Mobility Policy to reduce vehicle kilometers travelled, and with the GHG reduction targets under the Climate Act. Neither the Chief Executive nor the elected members explain why the Council has decided not to implement aforementioned mandatory objectives for sustainable settlement and transport strategies.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the planning authority has decided not to implement the aforementioned national and regional and regional policy or the mandatory objectives for sustainable settlement and transport strategies, nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

1.5 Settlement Frameworks

At material alterations stage the draft Plan was amended to include additions, extensions and amendments to several Settlement Frameworks, which would be contrary to compact growth and regeneration, and/or the sequential approach to zoning, and/or the co-ordination of land use zoning infrastructure and services, and/or the requirement to not zone land at risk of flooding, and/or facilitate access on to national roads, and which would encourage and reinforce a pattern of car-based trips.

MA Recommendation 5 of the Office’s submission to the Material Alterations required the plan to be made without nine of the proposed material alterations as follows:

MA Recommendation 5 – Settlement Frameworks

Having regard to the core strategy of the draft Plan and associated material alterations, to the provision of new development at locations that can support compact and sustainable development, and, in particular, to:

- section 10(2)(h) of the *Planning and Development Act 2000*, as amended (the Act), concerning the renewal of areas, having regard to the core strategy;
- section 10(2)(n) of the Act, concerning the promotion of sustainable settlement and transport strategies;
- the *Climate Action and Low Carbon Development Act 2015*, as amended, the *Climate Action Plan 2024* and the *National Sustainable Mobility Policy (2022)*;
- NSO, Regional Growth Ambition and RPO 3.3 for compact growth;
- NPO 6, NPO 16 and NPO 35, and RPO 3.4, concerning the regeneration, rejuvenation and intensification of towns and villages and their cores;
- NPO 72a-c and associated NPF Appendix 3, tiered approach to zoning;
- *The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)*;
- section 2.5 of the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)*; and
- the *Development Plans, Guidelines for Planning Authorities (2022)*, policy and objective for settlement capacity audits and associated infrastructural capacity assessment; and the policy and objective for the sequential approach to zoning; and the policy and objective not to de-zone pre-existing zoned serviced land,

the planning authority is required make the Plan without the following proposed material alterations and all associated supporting text:

- 21(b).1 (Map 21.1) Carrick / An Charraig
- 21(b).2 (Map 21.2) Ballintra
- 21(b).3 (Map 21.3) Bruckless
- 21(b).5 (Map 21.9) Mouncharles
- 21(b).7 (Map 21.19) Creeslough, parts 'B' and 'C'
- 21(b).8 (Map 21.20) Dunfanaghy
- 21(ab).10(d) Movice and associated policy
- 21(b).12 (Map 21.38) Newtowncunningham
- 21(b).14 (Map 21.42) Kilmacrenna

The sites of outstanding concern relate to the material amendment of the settlement framework for eight Rural Area (Settlements), which mainly comprise settlement boundaries, but which in some cases include Town Centre boundaries, Regeneration Opportunity, Amenity Area, Tourism and Opportunity Site defined areas. The Office accepts the reasons and recommendations of the Chief Executive in respect of Ballintra. In respect of Movice, the Office considers the associated policy sufficient and notes that the Office of Public Works (OPW) raised no concern with the subject amendment.

The Settlement Frameworks that remain of concern are: MA 21(b).1 Carrick / An Charraig, MA 21(b).3 Bruckless, 21(b).5 Mouncharles, MA 21(b).7 Creeslough, parts 'b' and 'c', MA 21(b).8 Dunfanaghy, 21(b).12 Newtowncunningham, and 21(b).14 Kilmacrennan.

The CE's Report (MA stage) recommended that the Development Plan be made without each of the subject amendments.

The elected members rejected the Chief Executive's recommendation, except in respect of Ballintra, and made the Development Plan with each of the subject amendments for the reasons set out in the section 31AM(6) notice letter.

1.5.1 MA 21(b).1 Carrick / An Charraig

MA 21(b).1 amends the boundary of Carrick / An Charraig to encompass an area of c.1.2ha outside of the CSO 2016 Settlement Boundary, c.500m from the centre of this small rural settlement.

The Chief Executive agreed with the OPR's recommendation because of the detachment of the site from the village and the absence of public effluent treatment facilities for the Carrick / An Charraig village. However, the elected members resolved to make the plan with MA 21(b).1, for the reason that the site is identified as part of a regeneration plan and is the only suitable location for a tourism focused development of this nature due to the scale of development, the existing road alignment and the river traversing the village, and would build on the town's tourism potential. There is, however, no regeneration or tourism policy or objective relating to the site in the adopted Plan.

The reasons of the elected members do not address the substantive issues in relation to this site, relating to inadequate public wastewater treatment, the level of network reinforcement required to facilitate development on a peripheral, non-sequential site and inconsistency with compact growth. UE's submission on the material alterations identifies the settlement as having inadequate public wastewater treatment capacity.

1.5.2 MA 21(b).3 Bruckless

MA 21(b).3 amends the boundary of Bruckless to encompass a detached site of c.0.5ha in area, located at a distance of 185m from the original Settlement Framework boundary. There is no CSO 2016 boundary for this settlement.

The Chief Executive recommended to make the Development Plan without the site notwithstanding that that site was subject of 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 reasons given by the Chief Executive are that:

- Communal treatment plants are not supported by DCC (and there is no public sewer for Bruckless);
- Site is 0.2km from the settlement at its nearest point, and the provision of footpath and lighting to the site would appear to be cost prohibitive; and

- a significant portion of the south-east of the site is now identified as being within a flood risk area.

The reasons of the elected members for rejecting the Chief Executive's recommendation related to the lack of housing in the area and that Bruckless is a satellite of Killybegs. The reasons referred to the previous grant of permission on a portion of the site (albeit acknowledging that a portion of the site is subject of flooding), the presence of foundations associated with the permission on site, and the site is within walking distance to the village centre.

The reasons of the elected members do not however address the substantive issues in relation to this site, which relate to inadequate public wastewater treatment and the level of network reinforcement required to facilitate development on a peripheral, non-sequential site that is remote and dislocated from the village settlement, inconsistency with compact growth and sustainable settlement and transport strategies and impact on the national road network outside the 50-60kph limit. Uisce Éireann's submission (MA stage) identifies the settlement as having inadequate public wastewater treatment capacity.

1.5.3 MA 21(b).5 Mouncharles

MA 21(b).5 amends the boundary of Mouncharles with extensions amounting cumulatively to c.11ha, the larger of which (>10ha) is situated outside the CSO 2016 Settlement Boundary and is almost fully detached from the original boundary.

The CE's Report (xx stage) states, '*Having regard to the concerns expressed in the OPR and Uisce Eireann's submissions, and to the localised concerns identified in the previous CE Report, these proposals are not supported.*'

The elected members' reasons for rejecting the Chief Executive's recommendation related to the increased need for housing, the increased capacity of the imminently planned WWTP upgrade. It is stated that both sites A and B are within walking distance of the village, with pedestrian footpath connectivity to site A and that provision of a footpath would improve safety for existing walkers, and it provides an alternative to existing derelict properties whose owners are not willing to sell or refurbish.

The reasons of the elected members do not however address the substance of the Office's reasons for recommending the omission of the material amendment, which relate to the level of network reinforcement required to facilitate development on a peripheral, non-sequential site that is remote and dislocated from the village settlement, and inconsistency with compact growth and sustainable settlement and transport strategies. Further, according to Uisce Éireann's submission (draft stage), the project for Mountcharles is at stage 3 and must progress through detailed design and statutory approvals and a subsequent tender process for the procurement of a contractor to deliver the project, subject to necessary governance approvals and the next Investment Plan 2025 - 2029. Uisce Éireann's submission (MA stage) identifies the settlement as having inadequate public wastewater treatment capacity. The wastewater issues are therefore currently unresolved.

1.5.4 MA 21(b).7 Creeslough Parts B and C

MA 21(b).7 extends the settlement boundary of Creeslough by c.1.3ha in two parts 'A' and 'B', with part 'C' removing the Amenity Area objective. Part 'B' is located outside the CSO 2016 Settlement Boundary.

The Chief Executive states, *'The concerns of the OPR are noted, generally agreed and consistent with the conclusions contained in the CE Report at Draft Plan stage. With regards to the latter's comments, it should also be noted that the Creeslough treatment plant is the subject of an upgrade project being progressed by UE working in partnership with DCC. For the aforementioned reasons Items B and C are not supported.'*

The reasons of the elected members for making the Development Plan contrary to the Chief Executive recommendation are:

- there is limited capacity within the town for future development; and
- the restrictions imposed by the N56 policy have further reduced the capacity to build in this area and has further increased the need for residential developments within the town settlement.

The reasons of the elected members do not however address the substance of the Office's reasons for recommending the omission of the material amendment, which relate to the level of network reinforcement required to facilitate development on

peripheral, non-sequential sites, inconsistency with compact growth and sustainable settlement and transport strategies, inadequate WWTP capacity. While the CE's Report (MA stage) states that the Creeslough WWTP is the subject of an upgrade project being progressed by Uisce Éireann, neither the Wastewater Capacity Register nor Uisce Éireann's submission refers to same. Uisce Éireann's submission (MA stage) identifies the settlement as having inadequate public wastewater treatment capacity.

1.5.5 MA 21(b).8 Dunfanaghy

MA 21(b).8 extends the settlement boundary of Dunfanaghy by c.1.2ha within the CSO 2016 Settlement Boundary.

The CE's Report (MA stage) states '*Recommended not to extend the Settlement Framework boundary on the basis of there being more favourably located sites within the existing boundary sufficient to meet the needs for Dunfanaghy, and the narrow carriage width of the Old Cottage Road on the eastern side of the site connecting the site with the village centre.*'

The elected members rejected the Chief Executive's recommendation for reason that the Dunfanaghy extension has local road access.

The reasons of the elected members do not however address the substance of the Office's reasons for recommending the omission of the material amendment, which relate to the limited capacity within the town for future development and the restrictions imposed by the N56 policy⁴ has increased need in the town, the level of network reinforcement required to facilitate development on peripheral, non-sequential sites, inconsistency with compact growth and sustainable settlement and transport strategies, inadequate WWTP capacity and the impact on the national road network outside of the 50-60kph limit. Uisce Éireann's submission on the material alterations identifies the settlement as having inadequate public wastewater treatment capacity. Dunfanaghy WWTP upgrade is currently at design stage (Stage 2).

⁴ This is assumed to refer to Policy T-P-12, addressed below.

1.5.6 MA 21(b).12 Newtowncunningham

MA 21(b).12 (part 'A') extends the settlement boundary of Newtowncunningham by c.2ha to the north of the N13 national primary road, largely outside the CSO 2016 Settlement Boundary and on the opposite side of the national road from the vast majority of the settlement; and (part 'B') extends the existing c.5ha Town Centre boundary by c.4.2ha.

The CE's Report (MA stage) supports the Office's recommendation for the following reason, stating in respect of:

Part 'A' -

~ The provision of a greenway car-park at this location or improved pedestrian connections across the N13 would not be dependent on the inclusion of the site within the settlement boundary;

~ It could give rise to other forms of inappropriate development at a location that is physically severed from the village by the N13.

~ The site lies entirely within Flood Zone A and Flood Zone.

Part B –

~ An expansive area is already designated town centre in the western portion of the village. This displays a dispersed low-density character with a small number of scattered retail and commercial premises, low density residential units and a primary care health centre, and a weak/ill-defined streetscape with significant scope for further infill development. Further expansion of this town centre area would therefore hinder the creation of vibrant, higher-density urban environment.

The reasons of the elected members for rejecting the Chief Executive's recommendation are that the town centre needs to be located at the centre of the village, that a large amount of development has taken place in the town centre, and the local Focus Group's future management plan for the town sets out a rationale for the town centre location.

However, the reasons do not address the substance of the Office's reasons for recommending the omission of the material amendment which related to the location

of the site within flood zone A and B, inconsistency with compact growth and sustainable settlement and transport strategies, impact on the national road network outside of the 50-60kph limit.

Uisce Éireann's submission on the material alterations also identifies the settlement as having inadequate public wastewater treatment capacity.

1.5.7 MA 21(b).14 Kilmacrennan

MA 21(b).14 extends the boundary of the settlement by c.7ha, largely outside the CSO 2016 Settlement Boundary.

The CE's Report (MA stage) supports the Office's recommendation for the reasons that the proposed extension '*would not accord with mandatory development plan objectives and other national and regional planning objectives related to sustainable settlement and transport strategies, climate action, compact growth, urban regeneration, and sequential zoning are agreed*'.

In addition, the Chief Executive refers to additional reasons for making the Development Plan without the subject material amendment, which concern the '*protection of the host proposed Natural Heritage Area, urban sprawl and the limited vehicular access to the subject area ... the proposed settlement framework would be not in the interests of proper planning and sustainable development*'.

The reasons of the elected members for rejecting the Chief Executive's recommendation are that the town needs additional lands for residential development and these lands are in the process of being actively developed.

However, the reasons do not address the substance of the Office's reasons for recommendation which related to inconsistency with compact growth and sustainable settlement and transport strategies, and impact on the national road network outside of the 50-60kph limit.

Uisce Éireann's submission (MA stage) identifies the settlement as having inadequate public wastewater treatment capacity.

1.5.8 Conclusion

No or no adequate reasons have been provided to explain why the planning authority has, in making the Development Plan, decided to make the Development

Plan inconsistent with the national and regional policy objectives for compact growth (NPO 3c and RPO 3.2) and/or NPO 74 and the NSO and Regional Growth Ambition for compact growth; NPO 72a-c for the coordination of land use zoning infrastructure and services and the policy and objective under section 6.2.1 of the Development Plans Guidelines for settlement capacity audits to inform the zoning of land; mandatory objectives under section 10(2)(n) for sustainable settlement and transport strategies and the obligations under the Climate Action Plan and Climate Act, with associated goals in the National Sustainable Mobility Policy to reduce vehicle kilometers travelled; RPO 3.10 and NPO 5 having regard to the *Flood Risk Guidelines*; RPO 6.5 having regard to the Spatial Planning and National Roads Guidelines; and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines. Nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

1.6 Business / Enterprise land use zonings

The draft Plan included a number of non-residential zoning objectives located on the periphery of Ballybofey-Stranorlar, Buncrana and Bundoran which were considered to be inconsistent with compact growth, would encourage and reinforce a pattern of car-based trips, and where there is an absence of adequate infrastructure for these lands.

Under Recommendation 14 of the Office's submission to the draft Plan, the Office required the planning authority to omit two Business / Enterprise zoning objectives, site BE1 in Ballybofey-Stranorlar and the site to the south east of Buncrana towards Ludden; and three opportunity sites in Bundoran (Opp Site 1, Opp Site 2, and Opp Site 3) which were also the subject of Recommendation 11.

Recommendation 14 of the Office's submission to the draft Plan states:

Recommendation 14 - Business Enterprise Zoning

Having regard to the location of employment in areas that can support more sustainable and plan-led development and, in particular, to:

- section 10(2)(n) of the *Planning and Development Act 2000*, as amended;

- NPO 74 and the National Strategic Objective for compact growth;
- NPO 11 to encourage more people and generate more jobs and activity within existing cities, towns and villages;
- NPO 72 for the co-ordination of land use zoning, infrastructure and services;
- RPO 3.13 to support the role employment and service provision role of smaller and medium sized towns;
- the *Climate Action and Low Carbon Development Act 2015*, as amended;
- the *Climate Action Plan 2023* and *National Sustainable Mobility Policy (2022)* targets to reduce vehicular kilometres travelled and associated actions and goals;
- section 6.2.5 of the *Development Plans, Guidelines for Planning Authorities (2022)* for an evidence-based approach to employment zoning; and
- the SEA Environmental Report concerning likely negative effects on air and climatic factors of the environment,

the planning authority is required to:

- (i) omit the following site land use zoning objectives:
 - (a) Site BE1 in Ballybofey-Stranorlar
 - (b) Site to the south east of Bunrana towards Ludden
 - (c) Opp site 1 Bundoran;
 - (d) Opp site 2 Bundoran; and
 - (e) Opp site 3 Bundoran, apart from that portion of Opp Site 3 comprising an unfinished housing estate, the disused service station and lands to the immediate south and west thereof;
- (ii) omit the following Policies:
 - (a) ED-P-1(c);
 - (b) ED-P-3 (b);
 - (c) ED-P-8; and

(d) ED-P-11.

(iii) apply an evidence-based approach and an integrated strategic land use planning approach to the zoning of any lands for business/enterprise or commercial uses.

The CE's Report (draft stage) recommended compliance with part (i) with the exception of (b), the site to the south east of Buncrana towards Ludden. In the interest of clarity, the Office is satisfied in respect of the response of the planning authority to part (ii). Neither the CE's Report nor the notice letters address part (iii) directly, or make any recommendation in this regard.

The elected members made the Development Plan with all five sites.

The Chief Executive provided detailed reasons for not complying with part (i)(b), including that Buncrana would benefit from future strategic serviced land initiatives; ensures identification of suitable land banks for acquisition; enables cross-sectional master-planning; facilitates the investment in utility and access infrastructure for developable landbanks; would enable businesses, particularly indigenous light industrial, engineering and business / financial services sector seeking sites, to grow in light of Brexit and other challenges.

The Office considers that these reasons justify the zoning of land for Business/ Enterprise in Buncrana, in general⁵. They do not, however, address the basis for Recommendation 14 in respect of the specific site, which related to its peripheral location, outside the indicative line of the proposed bypass and part outside the CSO 2016 Settlement Boundary, and the lack of adequate infrastructure for these lands.

The BE zoning objective facilitates office development, which has the potential to generate high levels of trips in a remote area with a substandard road network without footpaths or lighting. The Uisce Éireann submission (draft stage) also states *'localised water network upgrades likely to be required, extent depends on scale of development. Approx. 150m sewer network extension required'*.

⁵ Note, no strategic employment sites were identified for Buncrana in the RSES.

The Chief Executive's reasons also fail to 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 land use strategy and section 6.2.5 of the Development Plans Guidelines.

In respect of BE1 in Ballybofey-Stranorlar, the reasons of the elected members for rejecting the Chief Executive's recommendation is based on past experience where a major employer close to the town centre was constrained from expanding due to proximity to housing. The members wanted to avoid a similar scenario arising, which would prejudice the delivery of such uses to the town.

In the Office's view, such a scenario can be avoided through planning for a range of employment and enterprise uses on appropriately tailored land use zonings, consistent with standardized zonings under Appendix B of the Development Plans Guidelines, and by following an evidence-based approach required under section 6.2.5 of the Development Plans Guidelines: Zoning for Employment Uses.

Furthermore, the Office notes that the Development Plan includes extensive Opportunity Sites and Business/ Enterprise zoned land (including BE2) in Ballybofey which have the potential to accommodate a wide range of uses, including motor sales, industry light and general, data centre, and garage car repair, and warehousing.

These lands are located outside the CSO 2016 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 BE1 Ballybofey-Stranorlar.

In respect of 14(i)(c)-(e), the Bundoran Opportunity sites, the members rejected the Chief Executive's recommendation to omit the subject sites. The Office accepts the reasons given by the elected members for not accepting the recommendation in respect to Opp Site 1 and 3 and notes the extant permission in respect of Opp Site 2.

1.7 Flood Risk Management

The material alterations introduced MA 18(b).11 (Buncrana) which zoned land for highly vulnerable use (New Residential Phase 1) within Flood Zone A and B which was not subject to a Justification Test. This land was proposed to be zoned Open Space and Recreation in the draft Plan.

The Office required the planning authority, under **MA Recommendation 8** to make the Development Plan without the subject material alteration.

MA Recommendation 8 - Flood Risk Management

Having regard to the need to manage flood risk and, in particular to:

- NPO 57 requiring implementation of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) and integration of sustainable water management solutions; and
- RPO 3.10, flood risk management and integration of sustainable water management solutions,

the planning authority is required to make the Plan without MA 18(b).11 (Buncrana).

The Chief Executive's recommendation was to omit MA 18(b).11, consistent with MA Recommendation 8.

The elected members rejected the Chief Executive's recommendation and made the Development Plan with the material amendment.

The 31AM(6) notice letter did not directly address the response of the planning authority to MA Recommendation 8, but rather addressed it indirectly under the response to MA Recommendation 2, Zoning of land for residential use (Buncrana), which also referred to MA 18(b).11. The reasons given by the elected members are stated as:

The site is located within an established residential area, and the flooding concerns can be addressed.

The subject land is almost fully located within flood risk zone A and B. The policy framework set out in the Development Plan applies Flood Guidelines which provide a sound basis for planning authorities to identify, assess and take appropriate steps to manage flood risk in a sustainable manner within their area. The key message of the Flood Guidelines is to avoid development in areas at risk of flooding and to adopt a sequential approach to flood risk management. Furthermore, RPO 3.10 and NPO 57 seeks to avoid inappropriate development in areas at risk of flooding in accordance with the Flood Guidelines.

The sequential approach set out in the Flood Guidelines provides that where a planning authority is considering the future development of areas at a high or moderate risk of flooding, it must be satisfied that it can clearly demonstrate on a solid evidence-base that the zoning or designation for development will satisfy the Justification Test.

The OPW's submission on the material alterations states:

This zoning has been described as justified in the revised SFRA, via Justification Test BA-NRESP1-020. However this zoning would not appear to satisfy part 2(iii) of the Plan Making Justification Test. In addition, the answer provided to part 3 of the justification test is response 3B, which is a requirement for an SSFRA⁶ at development management stage.

This is not consistent with the requirement that "A flood risk assessment to an appropriate level of detail has been carried out as part of the Strategic Environmental Assessment as part of the development plan preparation process, which demonstrates that flood risk to the development can be adequately managed and the use or development of the lands will not cause unacceptable adverse impacts elsewhere" as set out in Box 4.1 of the Guidelines.

The reason given by elected members, that the flooding concerns can be addressed, are inconsistent with national and regional policy objectives and with the provisions of the Flood Guidelines which require that such matters are addressed through the

⁶ Site Specific Flood Risk Assessment

plan-making process and to avoid zoning land at risk of flooding for vulnerable uses, unless the development envisaged is critical to the functioning of an urban centre or extension to same for regeneration purposes, circumstances which the subject lands would not appear to justify.

The reasons given therefore fail to address the substantive issue in the OPR recommendation that the Development Plan be made without MA 18(b).11, which is that the material amendment is inconsistent with NPO 57 and RPO 3.10, which seek to avoid inappropriate development in areas at risk of flooding in accordance with the Ministerial Guidelines issued under section 28 of the Act, the Flood Guidelines.

No or no adequate reasons are given by the Chief Executive or the elected members for the Development Plan not being consistent with the national and regional policy objectives and for not implementing the guidelines, or how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

1.8 Access to National roads

Policy T-P-12 (b) and (c) of the adopted Development Plan seek to permit access to an extensive section of the N56 National Secondary Road for one off rural housing (section 8.1.3.1 also refers).

Part (a) of Policy T-P-12 includes a condition to the restriction on development which would result in the intensification of existing access points (i.e. 'adverse intensification').

Policy T-P-12 of the adopted Development Plan states:

- a. 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. National Roads where the speed limit is greater than 60 kph; or*
 - ii. 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.

b. Within the section of the N56 National Secondary Road between the Five Points Junction (Killybegs) and the Mountain Top Letterkenny (identified on Map 8.1.3A), development of one-off rural houses impacting on the National Secondary Road may be considered subject to the following:

- i. As a first preference, the applicant shall use an alternative access onto the public (County or Regional) road network where such an alternative is available and, in such circumstances a new access or intensification of an existing private access onto the National Secondary Road shall not be permitted;*
- ii. As a second preference, the applicant shall use an existing private access (either family owned, or in third party ownership) onto the National Secondary Road where such a practical and realistic alternative is available and in such circumstances, a new access onto the National Secondary Road shall not be permitted;*
- iii. A new access onto the National Secondary Road shall only be considered where the applicant has clearly demonstrated that the options identified in the immediately preceding paras. (a) and (b) are not available.*

c. Proposals shall only be considered where:

- i. the applicant can provide evidence that they, or their parents, have owned the subject lands for a period of at least 7 years;*

the applicant shall enter into a legal agreement under Section 47 of the Planning and Development Act, 2000 (As Amended), which agreement shall provide that the subject dwelling shall be occupied by the

applicant as his/her principal place of residence for a minimum period of seven years commencing on the date of the first such use.

ii. Proposals shall be required to demonstrate compliance with the requisite national roads design standards including the provision of relevant national vision lines and stopping sight distances.

The Office required the planning authority, under Recommendation 15 (i) and (ii), to omit Policy T-P-12 (b) and (c) and associated text in section 8.1.3.1, and to amend Policy T-P-12(a) consistent with NPO 74 for the delivery of the national strategic outcomes, NSO 2 of the NPF and RPO 6.5 to maintain the strategic capacity and safety of the national roads network, and having regard to sections 2.5 and 2.6 of the Spatial Planning and National Roads Guidelines and to the investment priorities under the *National Investment Framework for Transport in Ireland*.

Recommendation 15 – Access to National Roads stated:

Recommendation 15 - Access to National Roads

Having regard to the need to maintain the capacity and safety of the strategic road network and, in particular:

- section 10(2)(n) of the *Planning and Development Act 2000*, as amended, to promote sustainable settlement and transport strategies;
- NPO 74 to align the NPF with the NDP through the delivery of the national strategic outcomes;
- NSO 2 and RPO 6.5, concerning maintaining the strategic capacity and safety of the national roads network;
- sections 2.5 and 2.6 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), in respect of the require policy approach for access to national roads;
- the *Climate Action and Low Carbon Development Act 2015*, as amended, mandatory target to reduce greenhouse gas emissions by 51%;

- the *Climate Action Plan 2023* and *National Sustainable Mobility Policy (2022)* targets to reduce vehicle kilometres travelled per year and associated actions and goals; and
- The *National Investment Framework for Transport in Ireland (2021)*, four investment priorities,

the planning authority is required to:

- omit Policy T-P-12 (b) and (c) and associated text in section 8.1.3.1;
- amend Policy T-P-12(a) as follows (deletions in 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:

- National Roads where the speed limit is greater than 60 kph; or*
- The section of the R238 Bridgend-Bunrana 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 plan-led and provided for through the Local Area Plan or Development Plan making process, including in consultation with the TII.

The planning authority should also ensure Policy T-P-12(a) is cross referenced throughout the Plan, as appropriate.

- omit the proposed relief roads and bypasses for the towns of Bunrana, Muff, Ballybofey, Burnfoot and Killybegs, unless they can be justified having regard to the current national transport and climate action policy context, on an appropriate evidence-basis;

- (iv) include individual modal share targets for i) Buncrana, Ballybofey-Stranorlar and Bundoran; and ii) for the county for the plan period, over current baseline levels; and
- (v) provide an effective monitoring regime for the implementation sustainable transport and progress on modal share targets.

Consistent with Recommendation 15(i) and (ii), the CE's Report recommendation was to:

- omit Policy T-P-12 (b) and (c) and associated text in section 8.1.3.1 (Recommendation 15(i)), and
- amend policy T-P-12(a) to delete the word '~~adverse~~' and insert the words '~~plan-led and~~'.

The elected members rejected the Chief Executive's recommendation and made the Development Plan with the policy as contained in the draft Plan. The reasons given relate solely to this policy being too restrictive and not meeting the needs of the rural communities in the west of the county.

The submission from Transport Infrastructure Ireland (TII) considers that the proposals included in Policy T-P-12 and the supporting text of section 8.1.3.1 of the draft Plan conflict directly with the provisions of the section 28 Spatial Planning and National Roads Guidelines, and makes the same recommendation as that of the Office under Recommendation 15(i) and (ii). The submission also advises and highlights the following:

- No agreement is in place with TII to facilitate access to the N56, national secondary road, as proposed in the Draft Plan,
- The Council proposals included in Policy T-P-12 extend significantly beyond areas that are 'lightly trafficked' where 'exceptional circumstances' in accordance with the DoECLG Guidelines could potentially apply as evidenced by materially previously forwarded by the Council,
- The proposed 'exceptional circumstances' provisions undermine the significant Exchequer investment in the N56, national road, undertaken in

order to improve safety levels for all road users and safeguard the routes stated strategic economic and 'lifeline' function.

Section 2.5 of the Spatial Planning and National Roads Guidelines requires all development plans must implement the policy measure

to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development.

A key message of the Spatial Planning and National Roads Guidelines is that

Development plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies'.

This is supported by NSO 2 to maintain the strategic capacity and safety of the national roads network, with particular regard to inter-urban roads as part of enhanced regional accessibility, and with RPO 6.5 which gives effect to same.

Section 2.6 of the Spatial Planning and National Roads Guidelines provides for exceptional circumstances to the section 2.5 requirements, where '*planning authorities may identify stretches of national roads where a less restrictive approach may be applied*' as part of the plan review process '*having consulted and taken on board the advice of [TII]*' and subject to specific criteria. Exceptional circumstances may be applied:

- (1) *in the case of development of national and regional strategic importance which by their nature are most appropriately located outside of urban areas and where the locations concerned have specific characteristics that make them particularly suitable for the developments proposed; and*
- (2) *to certain lightly-trafficked sections of national secondary routes serving structurally weak and remote communities where a balance has to be struck between the important transport functions of such road and supporting the social and economic development the areas.*

The section 28 statement attached as Appendix 1 of the draft Plan, which states

A key policy matter contained in these Guidelines of particular significance for Donegal is that of the general presumption against the formation of new accesses, or the intensification of existing accesses, on lands adjoining National Roads to which speed limits greater than 60 kmh apply (as contained in Section 2.5 of the Guidelines).

The relevant Draft Plan policy is Policy T-P-12 that provides for possible derogation for the development of one-off rural houses impacting on the National Secondary Road within the section of the N56 National Secondary Road between the Five Points Junction (Killybegs) and the Mountain Top Letterkenny.

This statement does not, however, provide any or any adequate reasons as to why the planning authority has formed the view that it is not possible, because of the nature and characteristics of the area, to implement the policies and objectives of the Minister contained in Guidelines.

The reasons given by the elected members refer to meeting the needs of the rural communities in the west of the county. This policy however only concerns the development of one-off rural houses, and not the wider needs of the rural communities.

While the Office acknowledges that section 2.6 of the Spatial Planning and National Roads allows for exceptional circumstances for lightly trafficked national secondary roads serving structurally weak and remote communities, the N56 between the Five Points Junction (Killybegs) and the Mountain Top Letterkenny extends for for some 120km. No evidence has been provided that the entirety falls within the definition of 'lightly trafficked', and sections where this would be considered to apply have not been identified as part of the plan review process '*having consulted and taken on board the advice of [TII]*', as specified in section 2.6 of the Guidelines.

In addressing this issue, the CE's Report (draft stage) states:

It is acknowledged that this is a challenging issue for Council. It was for this reason that the internal National Road Access Implementation Group was set

up as a vehicle to explore what flexibilities might be achievable. The work of the Group concluded with the Executive recommending the identification of two stretches of the N56 that could be submitted to TII for consideration for derogation from national policy on the basis of the average annualised daily traffic counts being less than 3,000. Whilst this process was never fully closed out with TII, in any event Members resolved to include the more wide-ranging policy as contained in the Draft Plan and that is now the subject of such strong opposition from the agencies as referenced above.

The TII submission points to the significant public investment in the N56 to improve safety levels and safeguard the strategic economic and 'lifeline' function of the route. In this respect, the Office notes that under TII's strategy to enable *Project Ireland 2040* (National Roads 2040), that part of the N56 to the northwest of Letterkenny is identified as an Arterial National Secondary Road catering for high travel demand with a similar role to certain National Primary corridors in terms of moving people and freight. The remainder of the N56 to Killybegs is identified as a Lifeline Road, which refers to National Secondary Roads that carry limited traffic flows but form key transport links for the surrounding communities. This type of road serves a lifeline function for its individual transport users. Availability and climate resilience are priorities for lifeline roads.

In this regard, enhanced rural connectivity is an investment priority of the NIFTI, which

includes ensuring that vulnerable groups retain access to lifeline infrastructure ... and that the use of strategic links by traffic of high economic and strategic value is secure.' It recognises that 'A 'lifeline' road is one which has few available alternatives [and that] Failure of these roads adversely impacts on the accessibility of the surrounding area, leaving the communities they serve exposed to severe disruption and significant increases in journey times.'

It is evident, therefore, that the N56 provides a critical function for the wider community and this must be weighed carefully against facilitating further accesses to service one-off rural housing using an evidence based approach, which is not evident in this case, in accordance with Government policy under the NIFTI.

In relation to T-P-12 (a), this policy includes a condition on the policy not to permit developments which would result in the intensification of existing access points onto national roads where the speed limit is greater than 60kph, such that the intensification must not be an 'adverse intensification'.

There is, however, no basis for such a condition or limitation to the policy which, with the exception of the exceptional circumstances in parts (b) and (c) detailed above, is otherwise consistent with national and regional policy. The introduction of such a condition weakens the policy and has the potential to alleviate or reduce the restriction on development which would result in intensification of existing access points can be in some way relaxed contrary to the provisions of national and regional policy.

In the interests of clarity, the application of this condition to R238 Bridgend-Buncrana Regional Road is not a matter of concern as it does not involve a national road.

The national and regional policy framework, including NPO 74, NSO 2 and RPO 6.5, the Spatial Planning and National Roads Guidelines and the National Investment Framework for Transport in Ireland is clear and consistent in terms of protecting the capacity and safety of the national roads network. The inclusion of T-P-12 (a) in unamended form, (b) and (c) does not support the achievement of the national strategic outcomes of the NPF, specifically NSO 2 to maintain *'the strategic capacity and safety of the national roads network'*, and is inconsistent with NPO 74 for the delivery of the national strategic outcomes, or RPO 6.5 including to give effect the NSO 2, and fails to have adequate regard to Ministerial guidelines.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why T-P-12 (a), (b) and (c) have been retained in the Development Plan nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

1.9 Fahan Marina

At material alterations stage the planning authority introduced two material amendments which support and / or facilitate a hotel and marina leisure tourism development at Fahan Marina and environs, specifically:

- MA 21(a).3 inserts a new policy:

Policy SF-P-xx: To facilitate the sustainable provision of a hotel and marina leisure tourism development at Fahan Marina and its environs. In general, standalone holiday homes will not be supported.

- MA 21(b).9 part b extends the settlement boundary for Fahan to include lands at Fahan Marina and its environs.

The material alterations extends the settlement boundary into the Lough Swilly SAC, and immediately adjacent to the Lough Swilly SPA.

The Office required the planning authority, under MA Recommendation 6 to make the Development Plan without MA 21(a).3 and MA 21(b).9 part b.

MA Recommendation 6 – Fahan stated:

MA Recommendation 6 – Fahan

Having regard to the environmental sensitivities at this location, including Lough Swilly SAC and Lough Swilly SPA, and in particular, to:

- the SEA Environmental Report;
- the Natura Impact Assessment;
- NPO 63, NPO 72a-c, and the lack of adequate wastewater treatment capacity;
- NPO 41a management of the coastal resource; and
- NPO 75 environmental assessments,

the planning authority is required make the Plan without MA 21(b).9(b) Fahan and associated policy under MA 21(a).3.

The CE's Report did not agree with the recommendation of the Office, and recommended to make the Development Plan with the proposed material alterations, stating:

Notwithstanding, having regard to the qualifying interests of the Lough Swilly SAC (see below), it is considered that the principle of a marina-type development should not be precluded at this location. Furthermore, it is also considered that 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.

Estuaries [1130]

Coastal lagoons [1150]

Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]

Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]

Phocoena phocoena (Harbour Porpoise) [1351] Lutra lutra (Otter) [1355]

The elected members made the Development Plan with proposed material alterations MA 21(b).9(b) and MA 21(a).3, consistent with the recommendation of the Chief Executive and for the reasons given in support of the recommendation.

Uisce Éireann's submission (MA stage) indicates that there is no or inadequate public wastewater treatment in Fahan WWTP at present and there is no project committed to provided additional capacity within the plan period. The CE's Report (MA stage), however, indicates the option of an on-site treatment facility.

While the Office accepts the importance of economic and tourism development to areas such as Fahan, the marina and environs are located in a highly sensitive coastal environment, within an SAC and adjacent to a SPA, and in an area without adequate wastewater capacity where an on-site treatment system is likely to be required.

The Office's submission to the material alterations raises a number of concerns regarding the lack of a clear rationale and adequate level of consideration of the potential environmental impacts of the proposed material alterations, contrary to

NPO 41a to ensure that coastal resources are managed to sustain their physical characteristics and environmental quality, and NPO 75 to ensure that plans are subject to the relevant environmental assessment requirements including SEA and AA.

Specifically, the appropriate assessment of specific site locations identified for development (Natura Impact Report (NIR) section 7.2) does not include an assessment of a tourism development at Fahan marina. The policy is included in the assessment of policies and objectives set out in Appendix 1 which deals with high level strategic objectives.

Under potential impacts on European sites, it is stated that development delivered under this policy may impact on European sites. No details of the nature of potential impacts to the Qualifying Interests / Special Conservation Interest species of European sites is provided (disturbance, displacement etc.).

Under adverse effect on the integrity after mitigation, it is stated 'No'. However, no site specific mitigation measures are specified, instead a generic response to mitigation is stated, which is also extensively used in relation to other material alterations:

It is not possible to assess in detail the mitigation required by these high-level strategic objectives/policies. However, in general, in implementing such objectives/policies, avoidance on or near protected areas should be implemented, or where this is not possible, favouring of infrastructure that carries a lower risk of damage to protected areas should be emphasised in plans. In particular development should take full account of risks identified in the relevant River Basin Management Plan and in any relevant Fresh Water Pearl Mussel Sub-basin Plan or Shellfish Waters Pollution Reduction Programmes. When a specific development is proposed it will be considered in terms of its potential impact on European sites. Donegal County Council will ensure that implementation of individual objectives and policies gives sufficient consideration to environmental issues, and in all instances ensure compliance with Article 6 of the Habitats Directive in having regard to the relevant conservation objectives, qualifying interests and threats to the integrity of European sites.

Policy SF-P-xx is a site specific objective for a specific type of development at Fahan marina, and the Office does not therefore accept its characterisation above as a high-level strategic objective / policy, and that it is not possible to assess in detail the mitigation required.

Given the likely scale and impacts of a tourism development on the Fahan Marina site and environs, the location within an SAC and immediately adjacent to an SPA, and the likely requirement for the discharge of wastewaters from any tourism development in light of the inadequate public wastewater treatment in Fahan WWTP, the appropriate assessment is largely reliant on requiring compliance with article 6 of the Habitats Directive at project stage for mitigation. The NIR conclusion that there would be no '*adverse effect on the integrity after mitigation*', is therefore not a complete, precise or definitive finding and conclusion, and reasonable scientific doubt remains as to the adverse effects of tourism development at Fahan on the European sites in question.

The reasons for making the Development Plan with these material alterations does not address these matters, submitting that the qualifying interests of the Lough Swilly SAC do not preclude the principle of a marina-type development or the provision of an on-site treatment facility. The reasons of the Chief Executive makes no reference to the hotel development or Lough Swilly SPA.

No evidence is provided therefore that consideration has been given to the conservation objectives of the European sites affected, the specific potential impacts of this policy, site specific mitigation measures or that the policy framework exists to enable the delivery of any mitigation.

In relation to the lack of wastewater treatment capacity in Fahan and the servicing of any future development by means of an on-site wastewater treatment, the *Draft Water Services Guidelines for Planning Authorities* (January 2018), section 5.3 advise that solutions such as private wastewater treatment plants should not generally be considered by planning authorities, and that Uisce Éireann will not retrospectively take over responsibility for developer provided treatment facilities or associated networks, unless agreed in advance.

Therefore, the making of the Development Plan with MA 21(a).3 and MA 21(b).9(b) is inconsistent with NPO 41a to ensure that Ireland's coastal resources are managed to sustain its physical characteristics and environmental quality, NPO 75 to ensure that plans are subject to the relevant environmental assessment requirements including AA, and NPO 63 and NPO 72a-c regarding the lack of adequate services and sustainable use of water resources and water services.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why MA 21(a).3 and MA 21(b).9(b) have been retained in the Development Plan nor how this approach is consistent with an overall strategy for the proper planning and sustainable development of the area.

2. Opinion of the Office and Reasons

Having considered the adopted Development Plan, the Office also notes, under section 31AM(7) of the Act, that the said Development Plan has not been made in a manner consistent with the recommendations of the Office.

Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the 31AM(6) notice letter dated 24th May 2024 adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1)(a-e) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans such as this Development Plan:

- The provisions of section 31AM(2) as set out above.
- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.

- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,
 - b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
 - c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
 - d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and
 - (iv) the Birds Directives,

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

Accordingly, having considered the Development Plan in light of section 31AM(1)(a-e), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, the

section 12(5)(aa) notice letter and section 31AM(6) notice letter, the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office under Section 31AM (7).

In particular,

- The Development Plan as made includes zoning objectives and material alterations to the draft Plan, which zone additional residential land in excess of what is required for Buncrana and Ballybofey/ Stranorlar having regard to the growth targets under the core strategy. These zoning objectives and material alterations are located in peripheral and/or non-sequential locations, and / or unserviced locations, and / or outside the relevant CSO boundaries.

The zoning objectives and material alterations would individually and cumulatively encourage a pattern of development in particular locations which is inconsistent with the core strategy of the Development Plan, NPO 3c, RPO 3.2 and/or NPO 74 and the National Strategic Objective for compact growth, NPO 72a-c tiered approach to zoning 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 and the Climate Act, and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines.

- The Development Plan as made also includes material alterations which introduce additions, extensions and amendments to the Settlement Frameworks for Carrick/ An Charrig, Bruckless, Mouncharles, Cresslough, Dunfanaghy, Moville, Newtowncummingham, and Kilmacrenna in peripheral and / or non-sequential locations, and/or unserviced locations, and / or outside the relevant CSO boundaries, and/or in areas at risk of flooding, and/or on the national road network.

The material alterations would individually and cumulatively encourage a pattern of development in particular locations which is inconsistent with NPO 3c, RPO 3.2 and/or NPO 74 and the National Strategic Objective for compact growth, NPO 72a-c tiered approach to zoning and having regard to the policy

and objective for settlement capacity audits under the Development Plans Guidelines (2022), section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies and the obligations under the Climate Action Plan and the Climate Action and Low Carbon Development Act 2015, RPO 3.10 and NPO 57 which requires implementation of *The Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009), and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines (2022) and maintaining the strategic capacity and safety of the national road network the Spatial Planning and National Roads Guidelines inconsistent with RPO 6.5.

- The Development Plan as made also includes zoning objectives for Business/ Enterprise in Buncrana and Ballybofey/ Stranorlar which can accommodate a range of high intensity employment uses. These zoning objectives are located in peripheral and unserviced locations largely outside the relevant CSO boundaries and would encourage a pattern of development that is inconsistent with NPO 74 to align the NPF and the NDP through the delivery of national strategic outcomes including NSO 1 compact growth, NPO 11 to encourage more people and generate more jobs and activity in towns and villages and RPO 3.13 to support employment and service provision in smaller and medium sized towns, NPO 72a-c tiered approach to zoning, section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies, NPO 54 and the obligations under the Climate Action Plan and the Climate Action and Low Carbon Development Act 2015, including the goal of the National Sustainable Mobility Policy to better integrate land use and transport planning to support the achievement a reduction in vehicular kilometers travelled in line with the Climate Action Plan, and fails to have regard to the evidence-based approach to employment zoning under section 6.2.5 of the Development Plans Guidelines (2022).
- The Development Plan as made includes a material alteration to zone land New Residential Phase 1 which lands are almost fully located within flood zone A and B, inconsistent with RPO 3.10 and NPO 57 which requires implementation of *The Planning System and Flood Risk Management*

Guidelines for Planning Authorities (2009), and does not apply these guidelines.

- The Development Plan as made includes Policy T-P-12 which seeks to permit access to an extensive section of the N56 National Secondary Road for one off rural housing (section 8.1.3.1 also refers) and introduces a condition to the restriction on development which would result in the intensification of existing access points (ie. 'adverse intensification').

This policy is inconsistent with NPO 74 to align the NPF and the NDP through the delivery of national strategic outcomes including NSO 2 Enhanced Regional Accessibility, and RPO 6.5 to give effect to NSO 2 and to maintain the strategic capacity and safety of the national road network, and fails to have regard to sections 2.5 and 2.6 of the Spatial Planning and National Roads Guidelines to maintain the capacity, efficiency and safety of national roads, avoiding the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply.

- The Development Plan as made includes material amendments which extend the settlement boundary for Fahan at Fahan Marina to within the Lough Swilly SAC and immediately adjacent to the Lough Swilly SPA, and introduces Policy SF-P-xx to facilitate a hotel and marina leisure tourism development at Fahan Marina and in an area without wastewater treatment capacity.

Furthermore, the Natura Impact Report (NIR) conclusion that there would be no '*adverse effect on the integrity after mitigation*', is not a complete, precise or definitive finding and conclusion, and reasonable scientific doubt remains as to the adverse effects of tourism development at Fahan on the European sites in question.

The material alterations are inconsistent with NPO 75 to ensure that plans are subject to the relevant environmental assessment requirements including appropriate assessment, NPO 41a to ensure that Ireland's coastal resources are managed to sustain its physical characteristics and environmental

quality, and NPO 63 and NPO 72a-c regarding the lack of adequate services and sustainable use of water resources and water services.

No or no adequate reasons or explanations relating to the proper planning and sustainable development of the area have been provided to explain why the planning authority has decided not to implement the aforementioned Guidelines, nor how this approach is consistent with an overall strategy for the proper and sustainable development of the area.

Further, the statement under section 28(1A)(b) attached to the Development Plan as made fails to include information that demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives as contained in the *Development Plan Guidelines*, *Flood Risk Guidelines*, and *Spatial Planning and National Roads Guidelines*, because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to section 28(1B)(b).

There is a positive obligation on the planning authority, pursuant to section 28(1A)(b) to give reasons for the forming of this opinion.

The factors that the Office has taken into account in forming this opinion are as follows:

- (i) The requirements of sections 10(1), 12(11), 12(18) and sections 28(1), 28(1A), 28(1B) and 28(1C) of the Act.
- (ii) The National Planning Framework including National Planning Objectives NPO 3c, NPO 11, NPO 41a, NPO 54, NPO 57, NPO 63, NPO 72a-c, NPO 74, and NPO 75, and National Strategic Outcomes 1 and 2, which state the following:

NPO 3c

Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.

NPO 11

In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

NPO 41a

Ensure that Ireland's coastal resource is managed to sustain its physical character and environmental quality.

NPO 54

Reduce our carbon footprint by integrating climate action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions.

NPO 57

Enhance water quality and resource management by:

- Ensuring flood risk management informs place-making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities.
- Ensuring that River Basin Management Plan objectives are fully considered throughout the physical planning process.
- Integrating sustainable water management solutions, such as Sustainable Urban Drainage (SUDS), non-porous surfacing and green roofs, to create safe places.

NPO 63

Ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.

NPO 72a

Planning authorities will be required to apply a standardised, tiered approach to differentiate between i) zoned land that is serviced and ii) zoned land that is serviceable within the life of the plan.

NPO 72b

When considering zoning lands for development purposes that require investment in service infrastructure, planning authorities will make a reasonable estimate of the full cost of delivery of the specified services and prepare a report, detailing the estimated cost at draft and final plan stages.

NPO 72c

When considering zoning land for development purposes that cannot be serviced within the life of the relevant plan, such lands should not be zoned for development.

NPO 74

Secure the alignment of the National Planning Framework and the National Development Plan through delivery of the National Strategic Outcomes.

NPO 75

Ensure that all plans, projects and activities requiring consent arising from the National Planning Framework are subject to the relevant environmental assessment requirements including SEA, EIA and AA as appropriate.

NSO 1 Compact Growth

Achieving effective density and consolidation rather than more sprawl of urban development

NSO 2 Enhanced regional accessibility (inter-urban roads)

Maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

- (iii) The Regional Spatial and Economic Strategy including Regional Policy Objectives 3.2, 3.10, 3.13 and 6.5 , which state the following:

RPO 3.2

(a) Deliver at least 50% of all new city homes targeted in the Galway MASP, within the existing built-up footprint of Galway City and suburbs.

(b) Deliver at least 40% of all new housing targeted in the Regional Growth Centres, within the existing built-up footprint.

(c) Deliver at least 30% of all new homes that are targeted in settlements with a population of at least 1,500 (other than the Galway MASP and the Regional Growth Centres), within the existing built-up footprints.

RPO 3.10

Ensure flood risk management informs development by avoiding inappropriate development in areas at risk of flooding and integrate sustainable water management solutions (such as SUDS, non-porous surfacing and green roofs) to create safe places. Development plans should assess flood risk by implementing the recommendations of the Planning System and Flood Risk Assessment Guidelines for Planning Authorities (2009) and Circular PL02/2014 (August 2014).

RPO 3.13

To support the role of smaller and mediumsized towns, which demonstrate an important role in terms of service provision and employment for their catchments within the economic function of the county. Such settlements will be identified through the Development Plan process as part of the Settlement Hierarchy and the Core Strategy.

RPO 6.5

The capacity and safety of the region's land transport networks will be managed and enhanced to ensure their optimal use, thus giving effect to National Strategic Outcome No.2 and maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.

(iv) The policies and objectives of the Development Plan Guidelines

Section 6.2.1 Zoning in the Development Plan

It is a policy and objective of these Guidelines that land-use zoning should principally be undertaken as part of the development plan process in tandem with the preparation of the directly-related core and settlement strategies, informed by a Settlement Capacity Audit.

Section 6.2.3 Sequential Approach to Zoning for Residential Development

It is a policy and objective of these Guidelines that planning authorities adopt a sequential approach when zoning lands for development, whereby the most spatially centrally located development sites in settlements are prioritised for new development first, with more spatially peripherally located development sites being zoned subsequently.

Section 6.2.5 Zoning for Employment Uses

The evidence and rationale underpinning the zoning of land for employment purposes must be clear and strategic in nature. Development plan preparation should include a comprehensive approach to estimating the differing zoning requirements for employment uses.

Estimating the land-use zoning requirement for employment development may require some flexibility and a strategic, long-term perspective. However, proposed employment zonings must have a credible rationale, particularly with regard to location and type of employment.

- (v) The *Spatial Planning and National Roads Guidelines*, issued by the Minister under section 28 of the Act including:
- The requirement to *'implement the policy ... to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development'* under section 2.5; and
 - the provisions for exceptional circumstances to the aforementioned under section 2.6.

- (vi) The **National Investment Framework for Transport in Ireland** (2022)
Investment Priority: Enhance Regional and Rural Connectivity.

It includes ensuring that vulnerable groups retain access to lifeline infrastructure, allowing them to access essential services, amenities and employment. For freight, connectivity means ensuring that goods can get to market and access ports and airports in a timely manner from everywhere in the State, and that the use of strategic links by traffic of high economic and strategic value is secure.

- (vii) *92/43/EEC The Habitats Directive*;
- (viii) *Directive 2001/42/EC* of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;
- (ix) The Chief Executive's reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.

In light of the above, the Office is therefore of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matter as set out in the draft direction to the planning authority accompanying this notice, i.e.:

- 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 Donegal County 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 towards Ludden, i.e. the subject land revert to not zoned from Business / Enterprise;
- (iv) Ballybofey/Stranorlar NR 2.2, i.e. the subject land revert to not zoned from New Residential (Phase 2); and
- (v) Ballybofey/Stranorlar BE1, i.e. the subject land revert 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 revert to Open Space and Recreation from New Residential (Phase 1);
- (ii) Buncrana MA 18(b).12, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1);
- (iii) Buncrana MA 18(b).13, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1);
- (iv) Buncrana MA 18(b).15, i.e. the subject land revert to Strategic Residential Reserve from New Residential (Phase 1);
- (v) Buncrana MA 18(b).16, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1);
- (vi) Ballybofey / Stranorlar MA 19(b).2, i.e. the subject land revert 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).20 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; and

- (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.

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,



Niall Cussen

Planning Regulator

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Donegal County Development Plan 2024-2030

“Development Plan” means the Donegal County Development Plan 2024-2030

“Planning Authority” means Donegal County Council

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 2024 (S.I. No. 234 of 2024), 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 (Donegal County Development Plan 2024-2030) Direction 2024.

(2) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:

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 Donegal County 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 towards Ludden, i.e. the subject land revert to not zoned from Business / Enterprise;

- (iv) Ballybofey/Stranorlar NR 2.2, i.e. the subject land revert to not zoned from New Residential (Phase 2)
 - (v) Ballybofey/Stranorlar BE1, i.e. the subject land revert 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 revert to Open Space and Recreation from New Residential (Phase 1)
 - (ii) Buncrana MA 18(b).12, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1)
 - (iii) Buncrana MA 18(b).13, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1)
 - (iv) Buncrana MA 18(b).15, i.e. the subject land revert to Strategic Residential Reserve from New Residential (Phase 1)
 - (v) Buncrana MA 18(b).16, i.e. the subject land revert to Rural / Agricultural from New Residential (Phase 1)
 - (vi) Ballybofey / Stranorlar MA 19(b).2, i.e. the subject land revert 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).20 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.

STATEMENT OF REASONS

- I. The Development Plan as made includes zoning objectives and material alterations to the draft Plan, which zone additional residential land in excess of what is required for Buncrana and Ballybofey/ Stranorlar having regard to the growth targets under the core strategy.

These zoning objectives and material alterations are located in peripheral and/or non-sequential locations, and/or unserved locations, and/or outside the relevant CSO boundaries. The zoning objectives and material alterations would individually and cumulatively encourage a pattern of development in particular locations which is inconsistent with the core strategy of the Development Plan, NPO 3c, RPO 3.2 and/or

NPO 74 and the National Strategic Objective for compact growth, NPO 72a-c tiered approach to zoning and having regard to the policy and objective for settlement capacity audits under the Development Plans Guidelines (2022), section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies and the obligations under the Climate Action Plan and the Climate Action and Low Carbon Development Act 2015, and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines for Planning Authorities (2022).

- II. The Development Plan as made also includes material alterations which introduce additions, extensions and amendments to the Settlement Frameworks for Carrick/ An Charrig, Bruckless, Mouncharles, Cresslough, Dunfanaghy, Merville, Newtowncummingham, and Kilmacrenna in peripheral and/or non-sequential locations, and/or unserviced locations, and/or outside the relevant CSO boundaries, and/or in areas at risk of flooding, and/or on the national road network.

The material alterations would individually and cumulatively encourage a pattern of development in particular locations which is inconsistent with NPO 3c, RPO 3.2 and/or NPO 74 and the National Strategic Objective for compact growth, NPO 72a-c tiered approach to zoning and having regard to the policy and objective for settlement capacity audits under the Development Plans Guidelines (2022), section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies and the obligations under the Climate Action Plan and the Climate Action and Low Carbon Development Act 2015, RPO 3.10 and NPO 57 which requires implementation of The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), and fails to have regard to the policy and objective for sequential zoning under the Development Plans Guidelines for Planning Authorities (2022) and maintaining the strategic capacity and safety of the national road network the Spatial Planning and National Roads Guidelines (2012) inconsistent with RPO 6.5.

- III. The Development Plan as made also includes zoning objectives for Business Enterprise in Buncrana and Ballybofey/ Stranorlar which can accommodate a range of high intensity employment uses.

These zoning objectives are located in peripheral and unserved locations largely outside the relevant CSO boundaries and would encourage a pattern of development that is inconsistent with NPO 74 to align the NPF and the NDP through the delivery of national strategic outcomes including NSO 1 compact growth, NPO 11 to encourage more people and generate more jobs and activity in towns and villages and RPO 3.13 to support employment and service provision in smaller and medium sized towns, NPO 72a-c tiered approach to zoning, section 10(2)(n) of the Act concerning the promotion of sustainable settlement and transport strategies, NPO 54 and the obligations under the Climate Action Plan and the Climate Action and Low Carbon Development Act 2015, including the goal of the National Sustainable Mobility Policy to better integrate land use and transport planning to support the achievement a reduction in vehicular kilometers travelled in line with the Climate Action Plan, and fails to have regard to the evidence-based approach to employment zoning under section 6.2.5 of the Development Plans Guidelines for Planning Authorities (2022).

- IV. The Development Plan as made includes a material alteration to zone land New Residential Phase 1 which lands are almost fully located within flood zone A and B, inconsistent with RPO 3.10 and NPO 57 which requires implementation of The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009), and does not apply these guidelines.
- V. The Development Plan as made includes Policy T-P-12 which seeks to permit access to an extensive section of the N56 National Secondary Road for one off rural housing (section 8.1.3.1 also refers) and introduces a condition to the restriction on development which would

result in the intensification of existing access points (ie. 'adverse intensification').

This policy is inconsistent with NPO 74 to align the NPF and the NDP through the delivery of national strategic outcomes including NSO 2 Enhanced Regional Accessibility, and RPO 6.5 to give effect to NSO 2 and to maintain the strategic capacity and safety of the national road network, and fails to have regard to sections 2.5 and 2.6 of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) to maintain the capacity, efficiency and safety of national roads, avoiding the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply.

- VI. The Development Plan as made includes material amendments which extend the settlement boundary for Fahan at Fahan Marina to within the Lough Swilly SAC and immediately adjacent to the Lough Swilly SPA, and introduces Policy SF-P-xx to facilitate a hotel and marina leisure tourism development at Fahan Marina and in an area without wastewater treatment capacity.

Furthermore, the Natura Impact Report (NIR) conclusion that there would be no 'adverse effect on the integrity after mitigation', is not a complete, precise or definitive finding and conclusion, and reasonable scientific doubt remains as to the adverse effects of tourism development at Fahan on the European sites in question.

The material alterations are inconsistent with NPO 75 to ensure that plans are subject to the relevant environmental assessment requirements including appropriate assessment, NPO 41a to ensure that Ireland's coastal resources are managed to sustain its physical characteristics and environmental quality, and NPO 63 and NPO 72a-c regarding the lack of adequate services and sustainable use of water resources and water services.

- VII. Further, the statement under Section 28(1A)(b) attached to the Development Plan as made fails to include information that demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the Development Plans Guidelines for Planning Authorities (2022), and/or in the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) and/or in The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) because of the nature and characteristics of the area or part of the area and to give reasons for the forming of that opinion and to explain why it is not possible to implement the policies and objectives, contrary to Section 28(1B)(b);
- VIII. The Development Plan has not been made in a manner consistent with, and has failed to implement, the recommendations of the Office of the Planning Regulator under section 31AM of the Act.
- IX. In light of the matters set out at I-VIII above, the Minister is of the opinion that the Development Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.
- X. In light of the matters set out at I to VIII, above, the Development Plan is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Appendix 1: Mapping of Sites Identified in Draft Direction

- (a) Buncrana
- (b) Ballybofey / Stranorlar
- (c) Settlement Frameworks

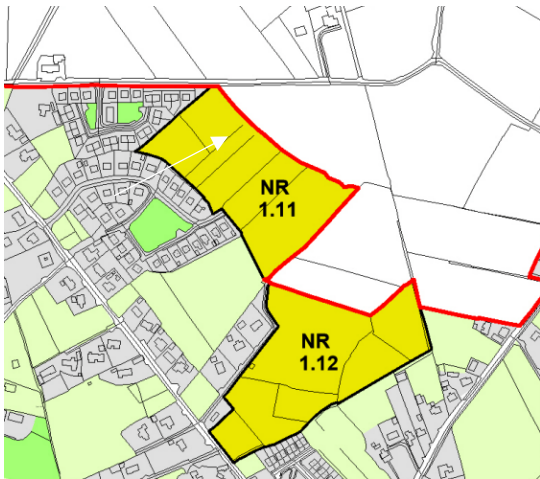
(a) BUNCRANA

Aerial View of Buncrana with general location of subject sites indicated in red

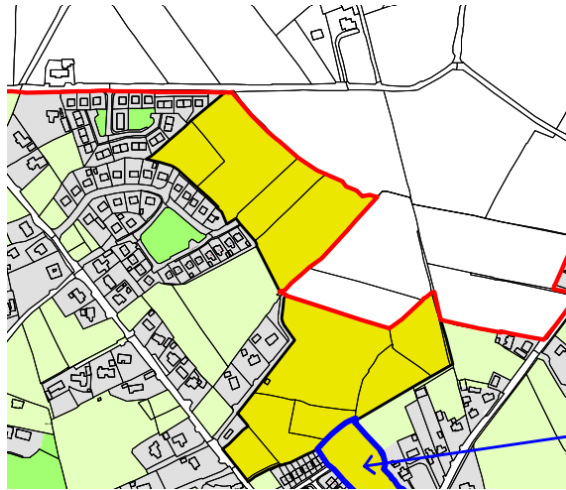


Residential NR 1.11 – i.e. no change between Draft Plan and Material Amendments

Draft Plan:



Material Alterations: No change

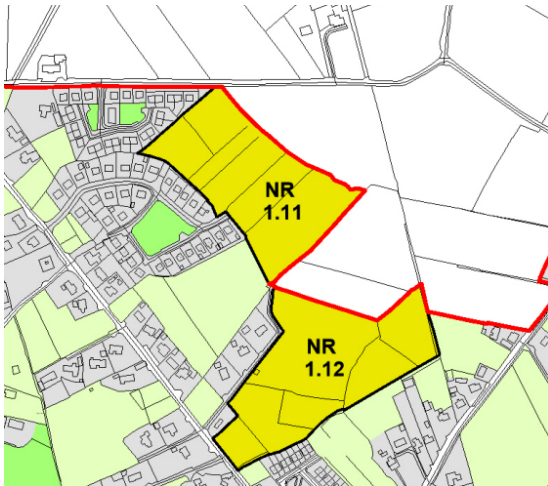


Aerial Photo:

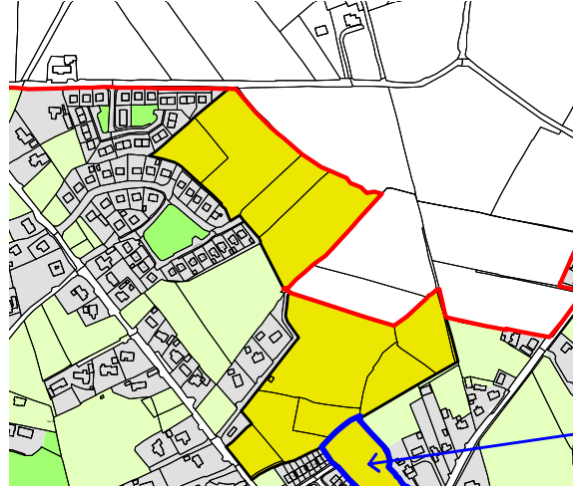


Residential NR 1.12 – i.e. no change between Draft Plan and Material Amendments

Draft Plan:



Material Alterations: No change

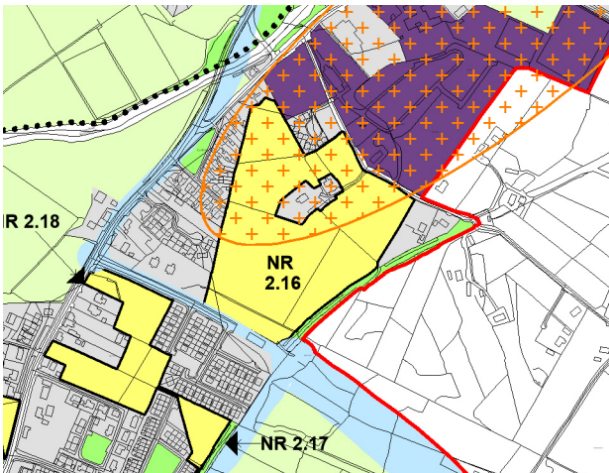


Aerial Photo:

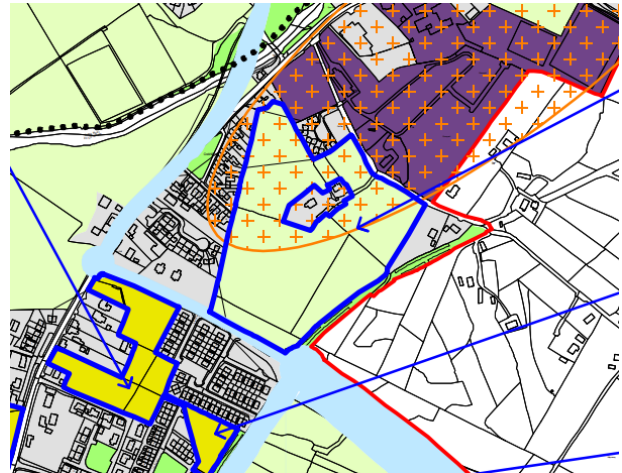


Residential NR 2.16 – i.e. Elected Members made Plan without MA18(b).17 (NR 2.16 thus stands)

Draft Plan: New Residential Phase 2



Material Alterations: Local Environment



Aerial Photo:

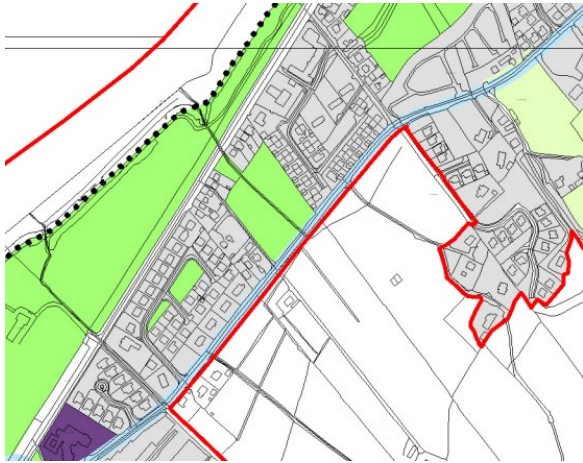




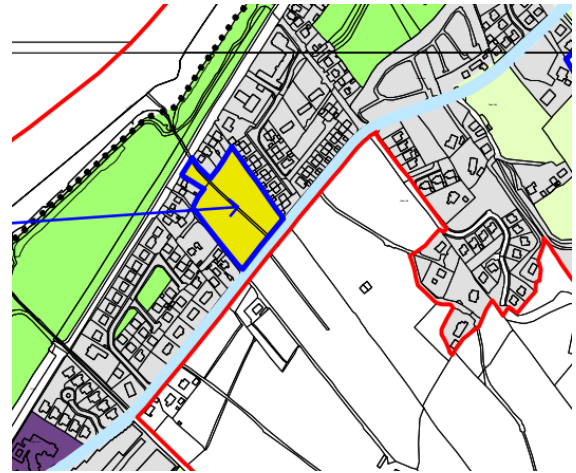
Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Material Alteration MA 18(b).11 – i.e. to change the subject lands from Open Space and Recreation to New Residential Phase 1

Draft Plan: Open Space and Recreation



Material Alterations: New Residential Phase 1



Aerial Photo:

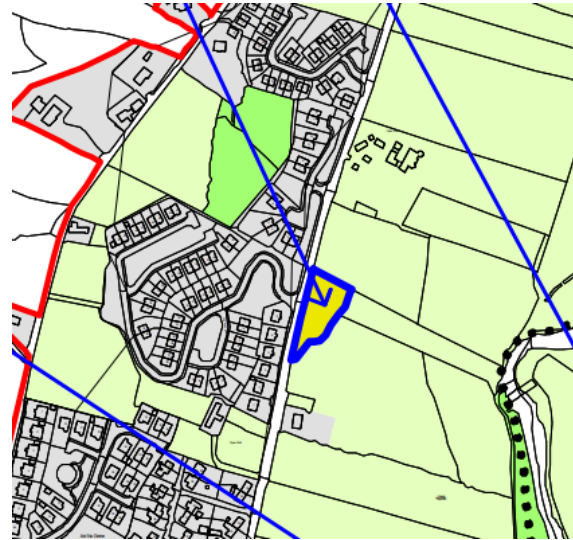


Material Alteration MA 18(b).12 – i.e. to change the subject lands from Rural Agricultural to New Residential Phase 1

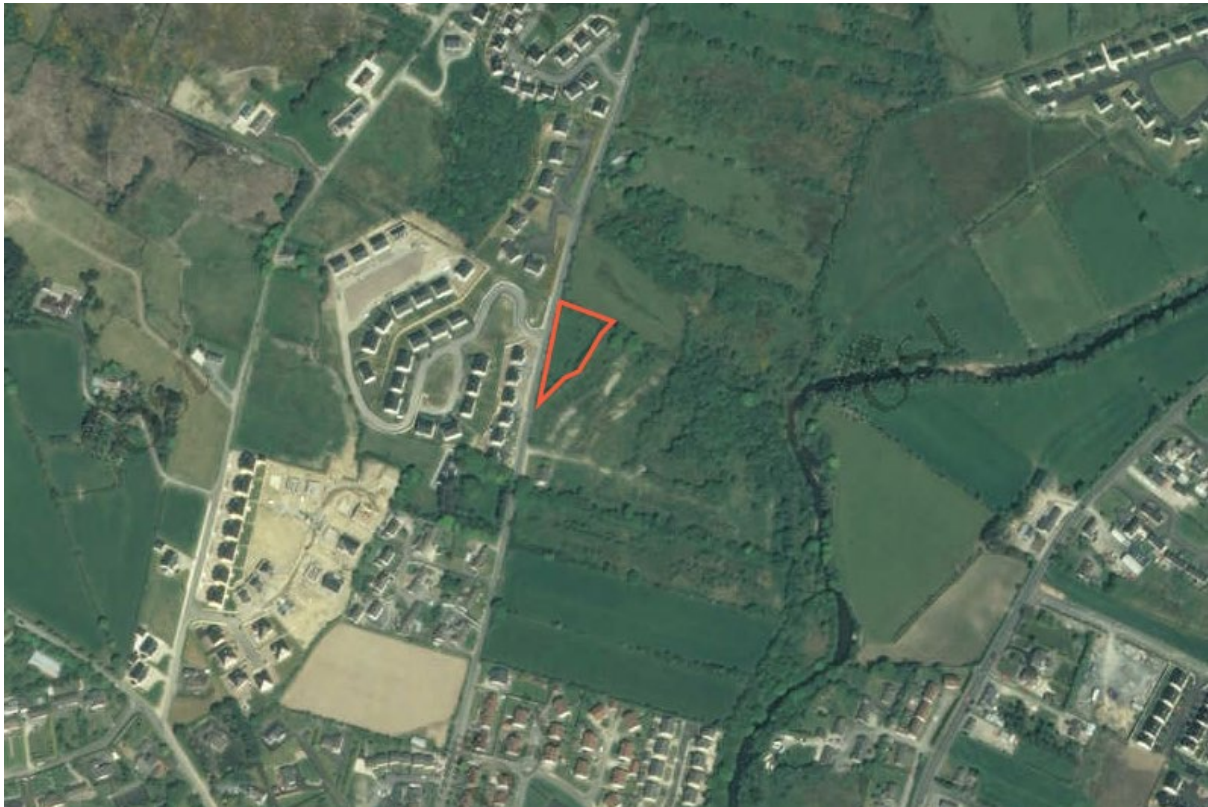
Draft Plan: Rural Agricultural



Material Alterations: New Residential Phase 1



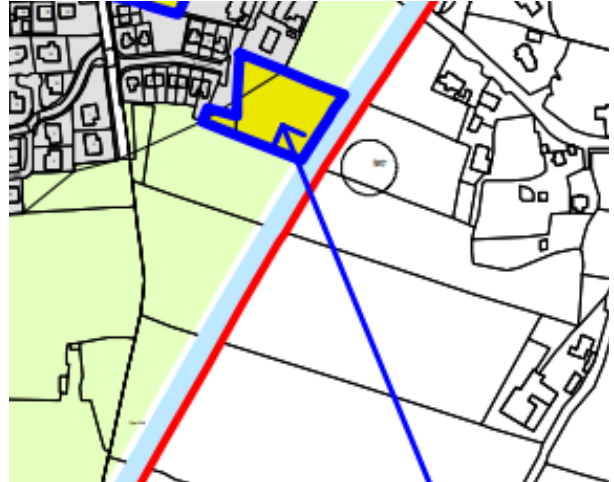
Aerial Photo:



Material Alteration MA 18(b).13 – i.e. to change the subject lands from Rural Agricultural to New Residential Phase 1

Draft Plan: Rural Agricultural

Material Alterations: New Residential Phase 1



Aerial Photo:

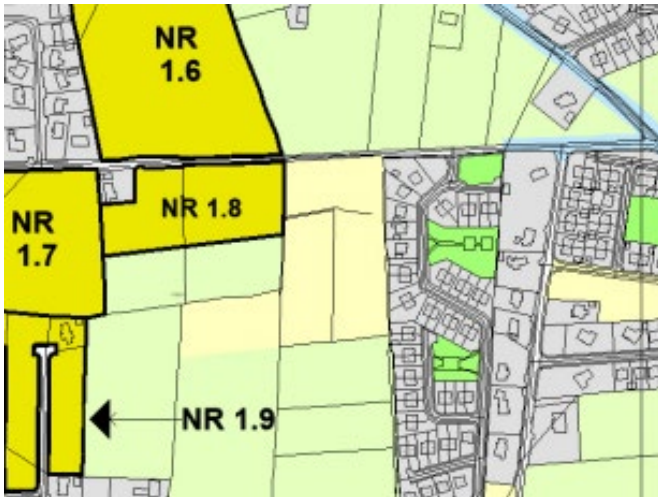




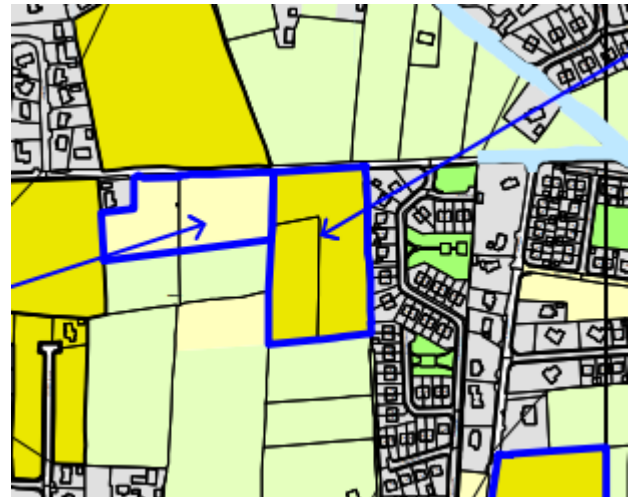
Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Material Alteration MA 18(b).15 – i.e. to change the subject lands from Strategic Residential Reserve to New Residential Phase 1

Draft Plan: Strategic Residential Reserve



Material Alterations: New Residential Phase 1



Aerial Photo:

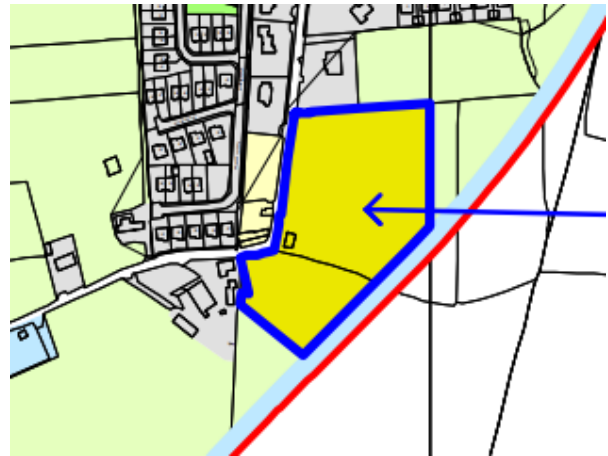


Material Alteration MA 18(b).16 – i.e. to change the subject lands from Rural Agricultural to New Residential Phase 1

Draft Plan: Rural Agricultural



Material Alterations: New Residential Phase 1

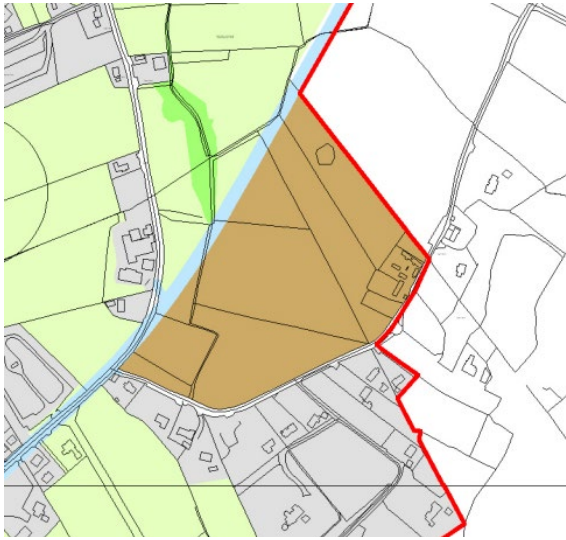


Aerial Photo:

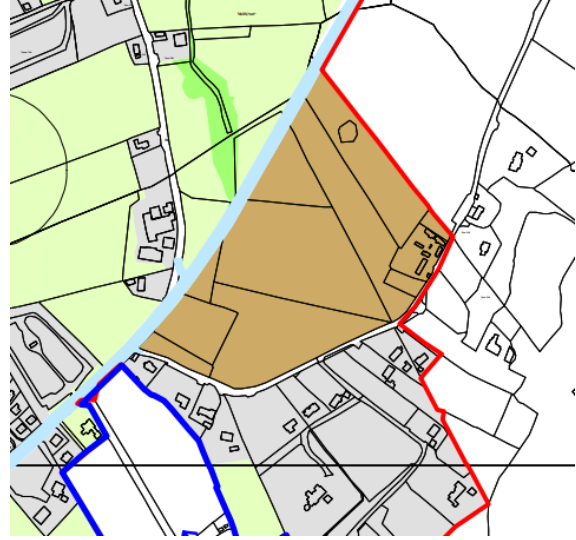


Business Enterprise – i.e. no change between Draft Plan and Material Amendments

Draft Plan: Business / Enterprise



Material Alterations: No amendment



Aerial Photo:



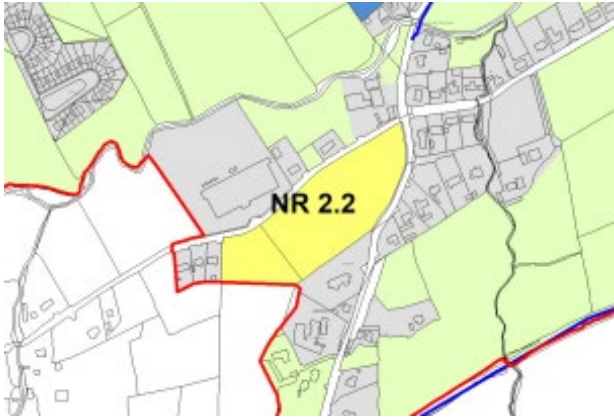
(b) Ballybofey/Stranorlar

Aerial View of with general location of subject sites indicated in red

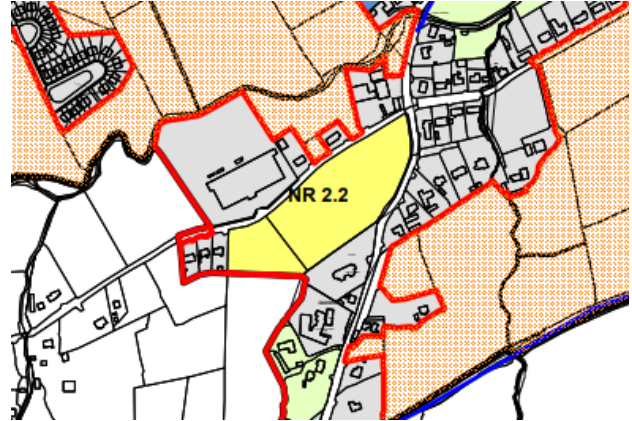


NR 2.2 New Residential Phase 2 – i.e. no change between Draft Plan and Material Alteration

Draft Plan: New Residential Phase 2



Material Alterations: No amendment

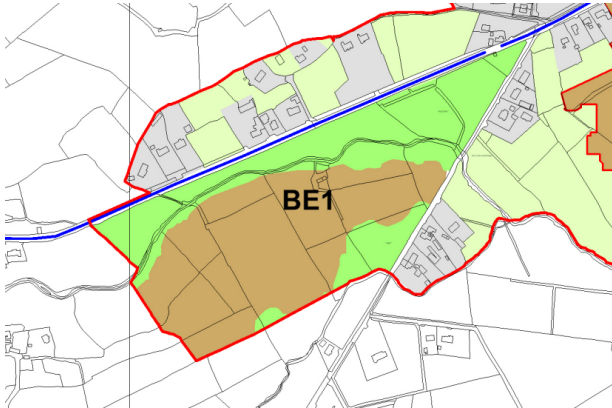


Aerial Photo:

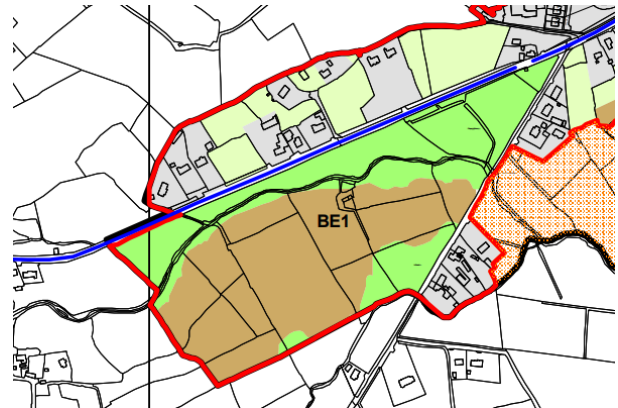


BE1 Business / Enterprise – i.e. no change between Draft Plan and Material Alteration

Draft Plan: Business / Enterprise



Material Alterations: No amendment

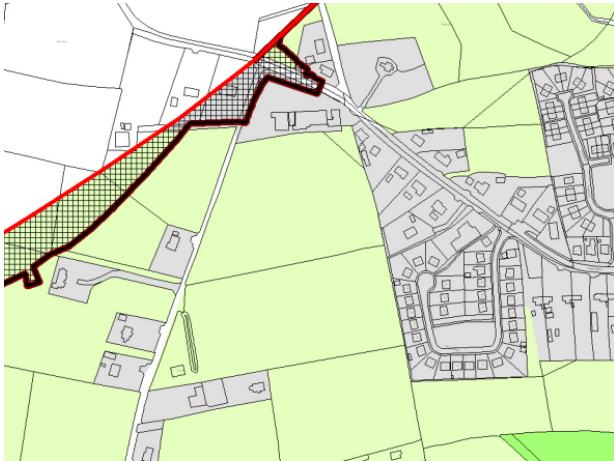


Aerial Photo:

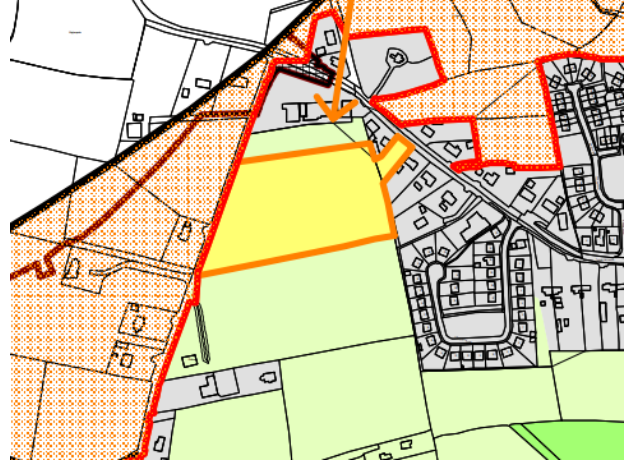


Material Alteration MA 19(b).2 – i.e. to change the subject lands from Rural / Agricultural to New Residential Phase 2

Draft Plan: Rural / Agricultural



Material Alterations: New Residential Phase 2

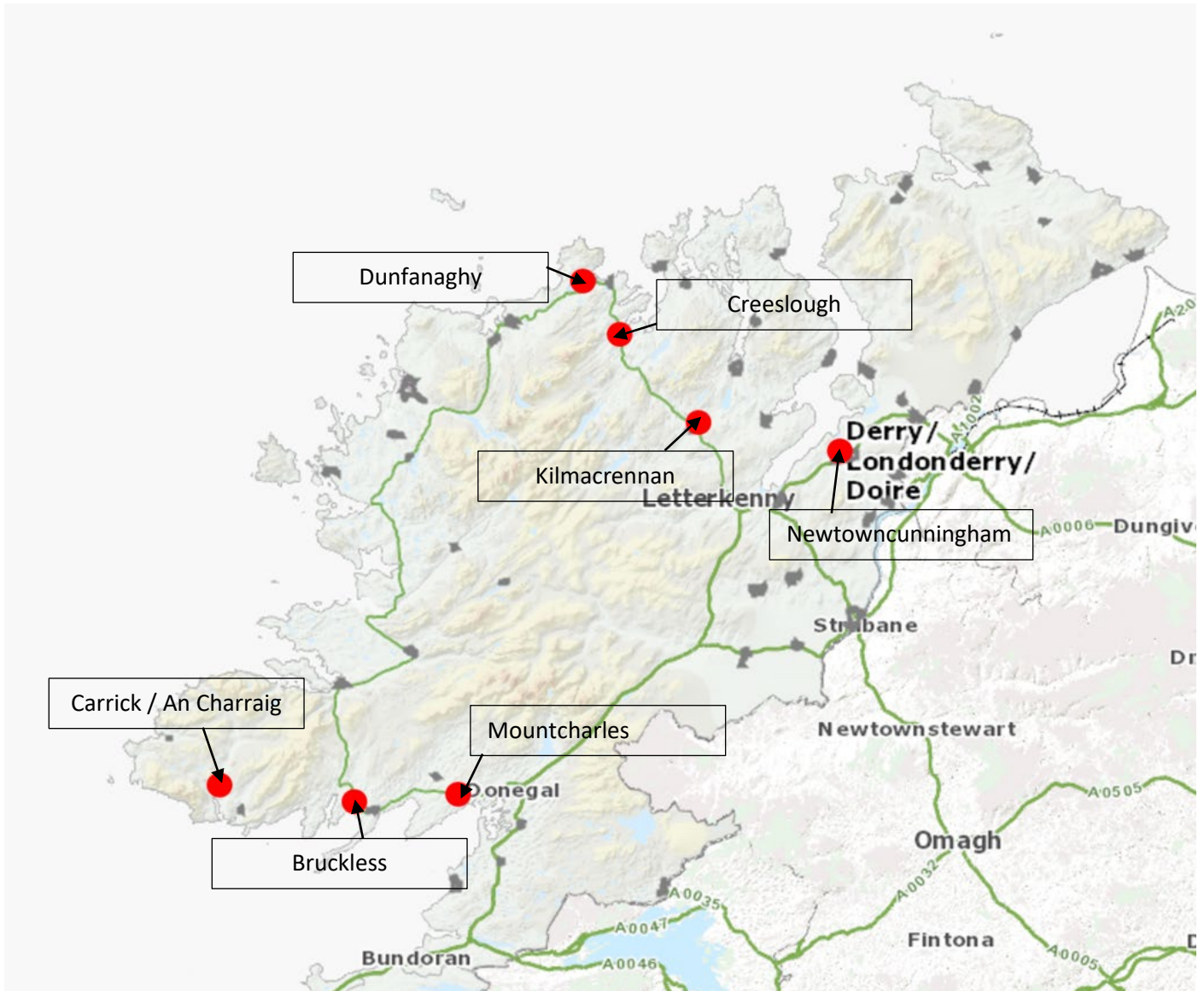


Aerial Photo:



(C) Settlement Frameworks

Key map with general location of subject sites indicated in red

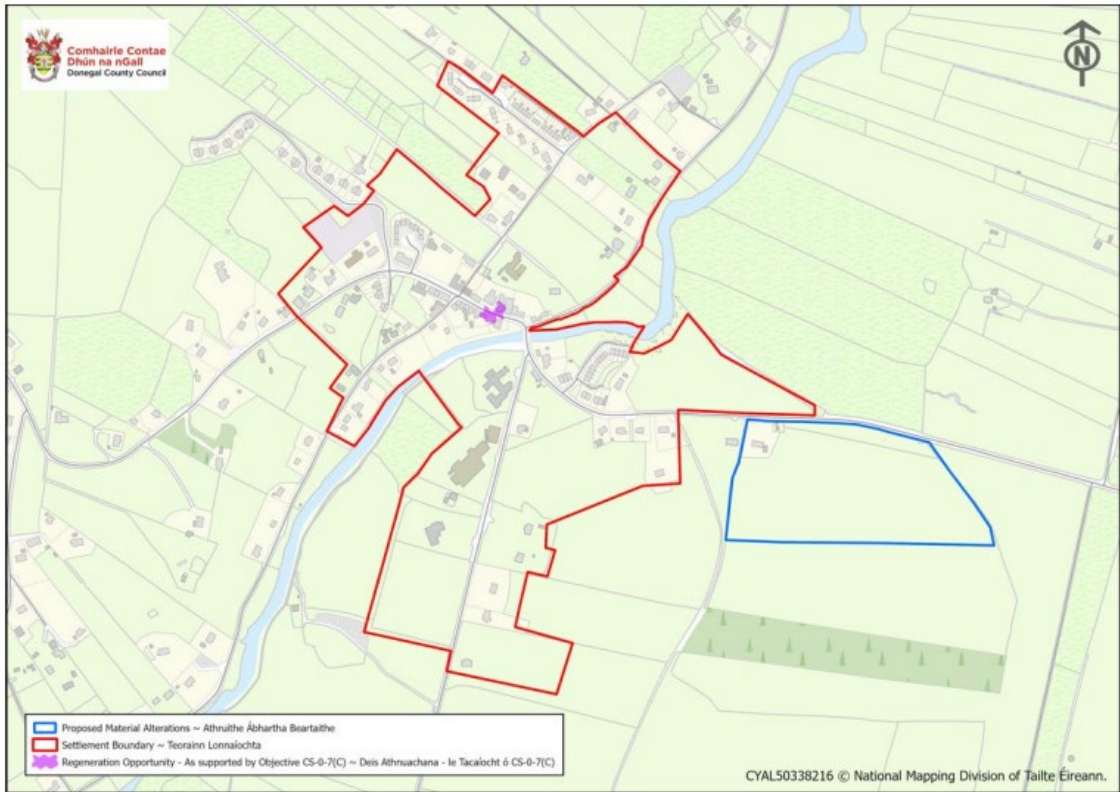




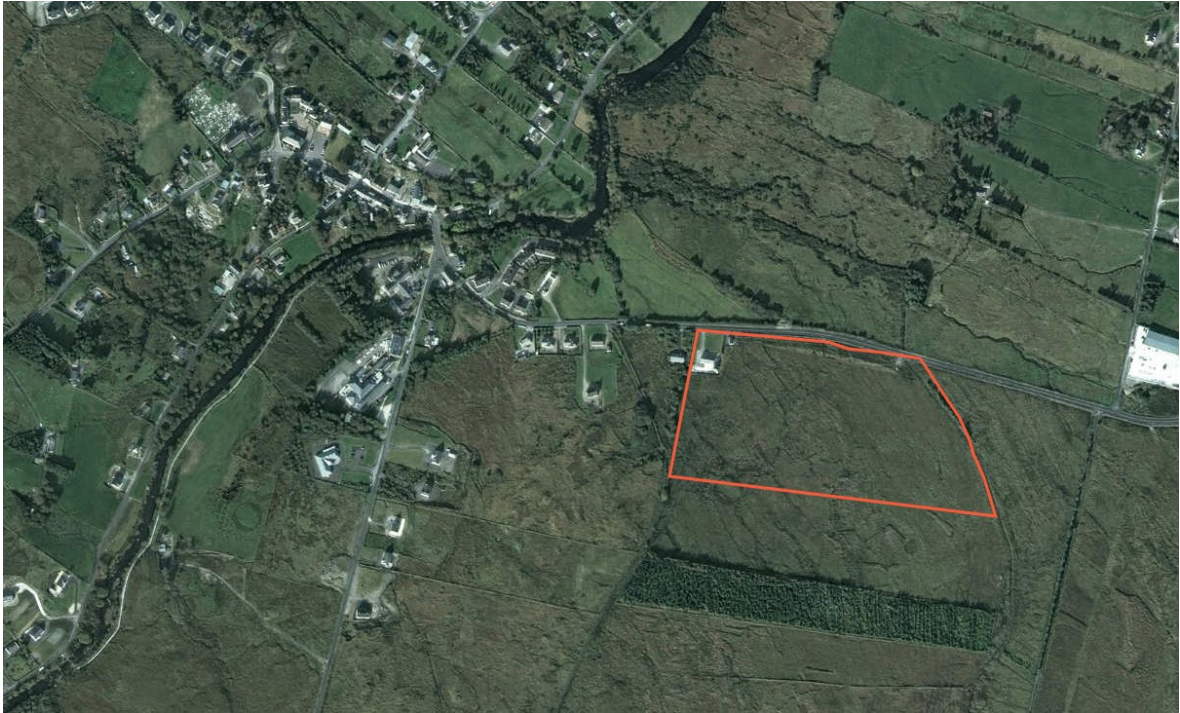
Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Carrick / An Charraig Settlement Framework – extend settlement boundary to include lands identified in blue outline

Material Alterations: extension of boundary



Aerial Photo:

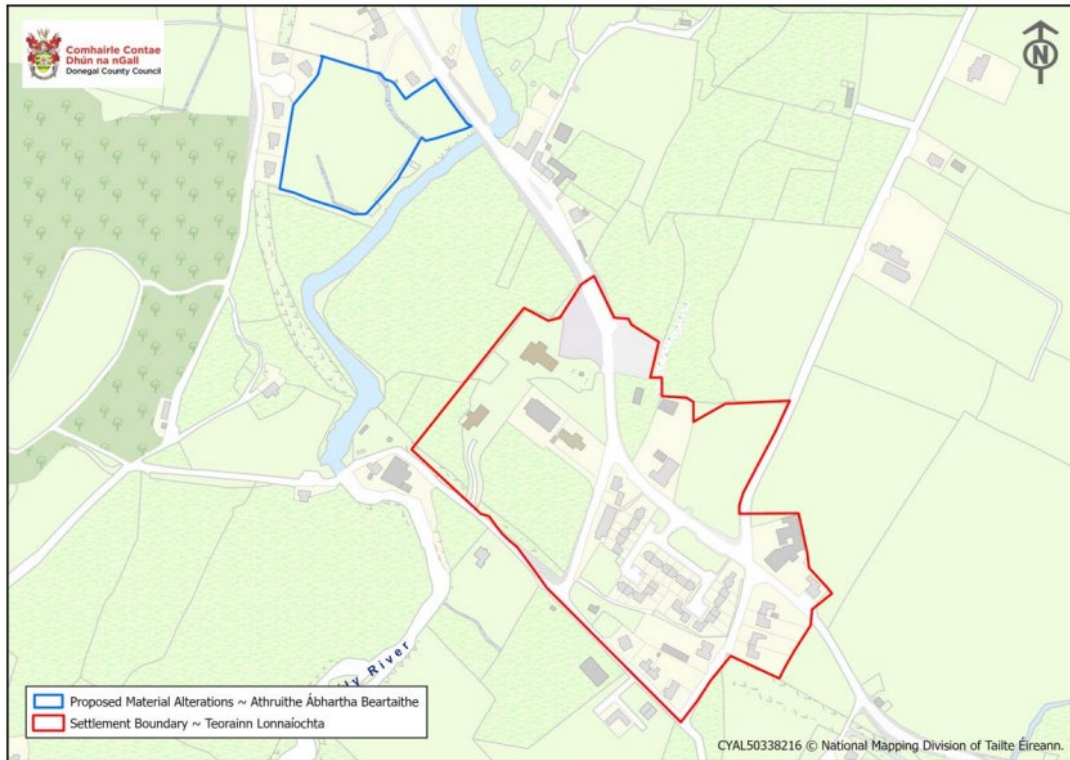




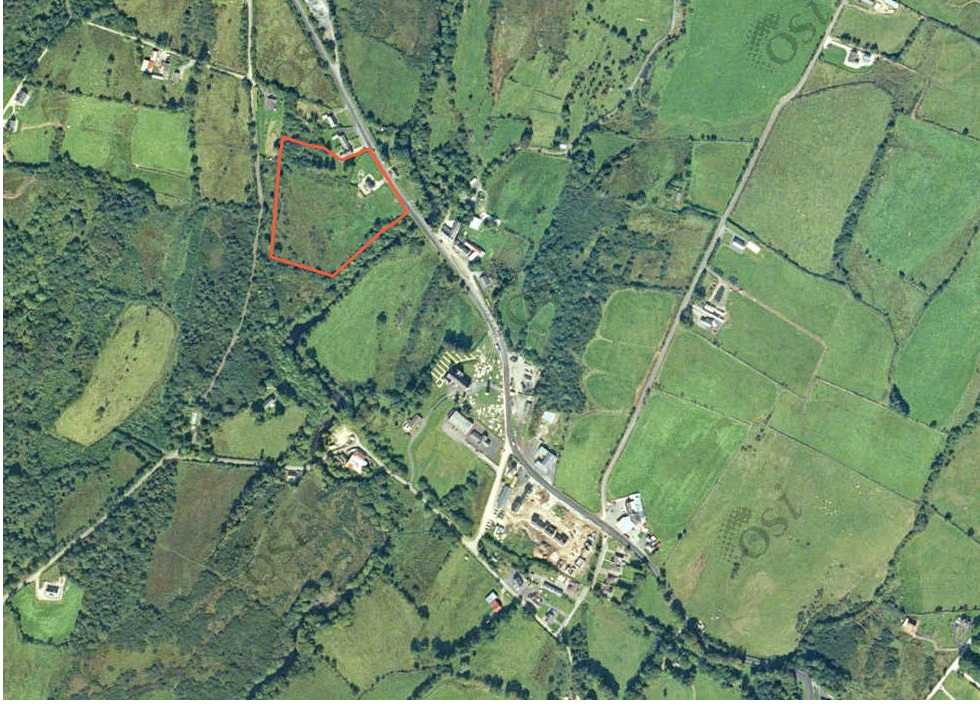
Oifig an Rialaitheora Pleanála
Office of the Planning Regulator

Bruckless Settlement Framework – extend settlement boundary to include lands identified in blue outline

Material Alterations: extension of boundary

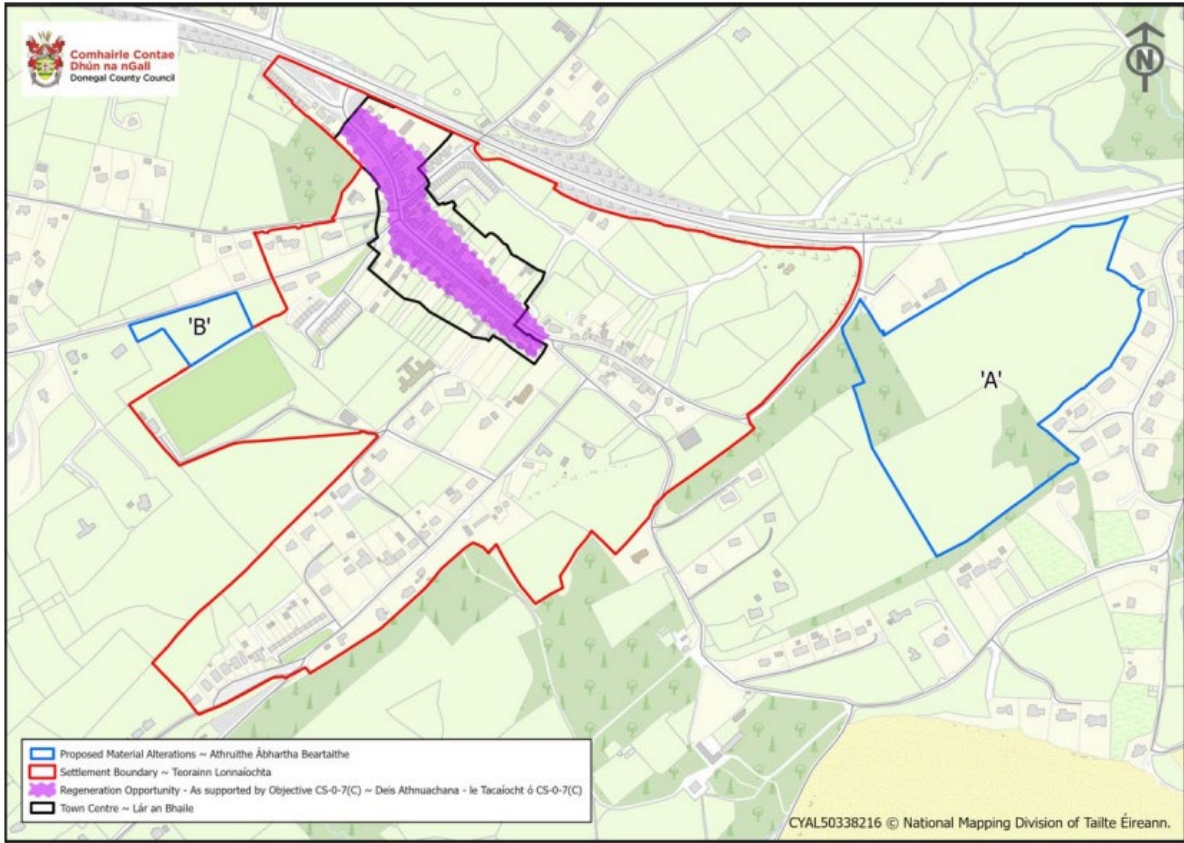


Aerial Photo:



Mountcharles Settlement Framework – extend settlement boundary to include lands labelled “A” and “B”

Material Alterations: extension of boundary

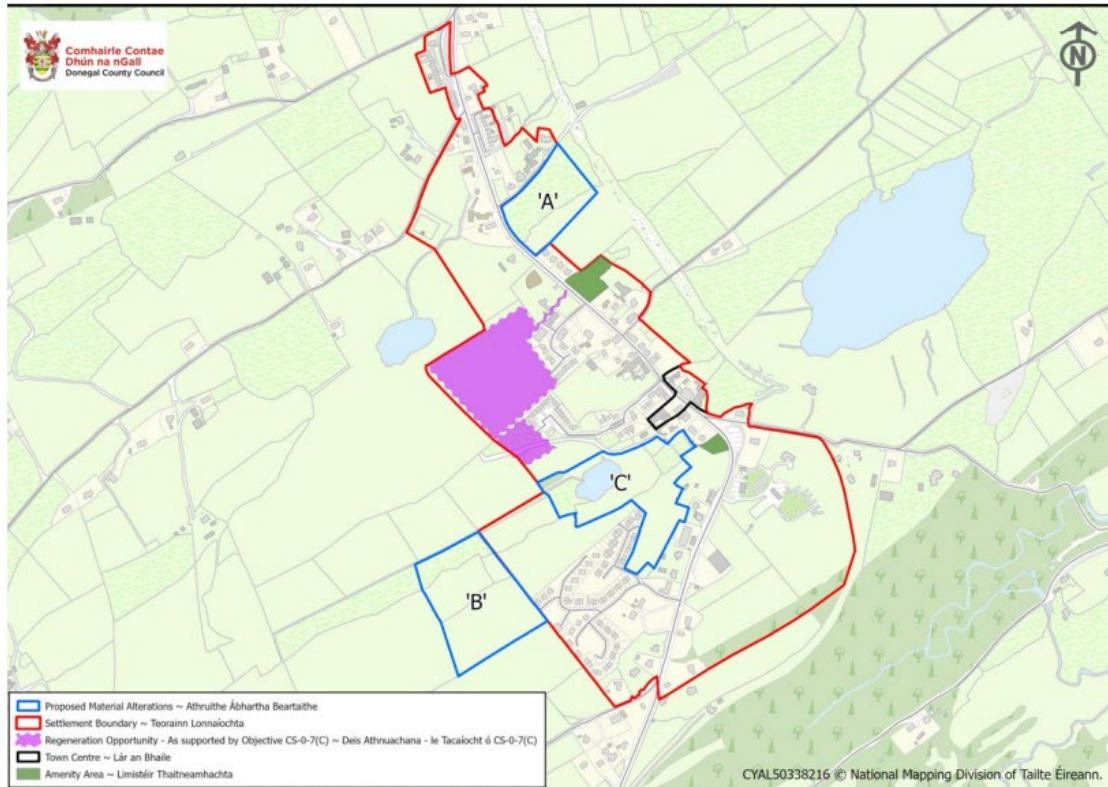


Aerial Photo:



Creeslough Settlement Framework – extend settlement boundary to include lands labelled “B” and remove Amenity Area objective for lands labelled “C”

Material Alterations: extension of boundary (A & B) and amendment of objective (C).

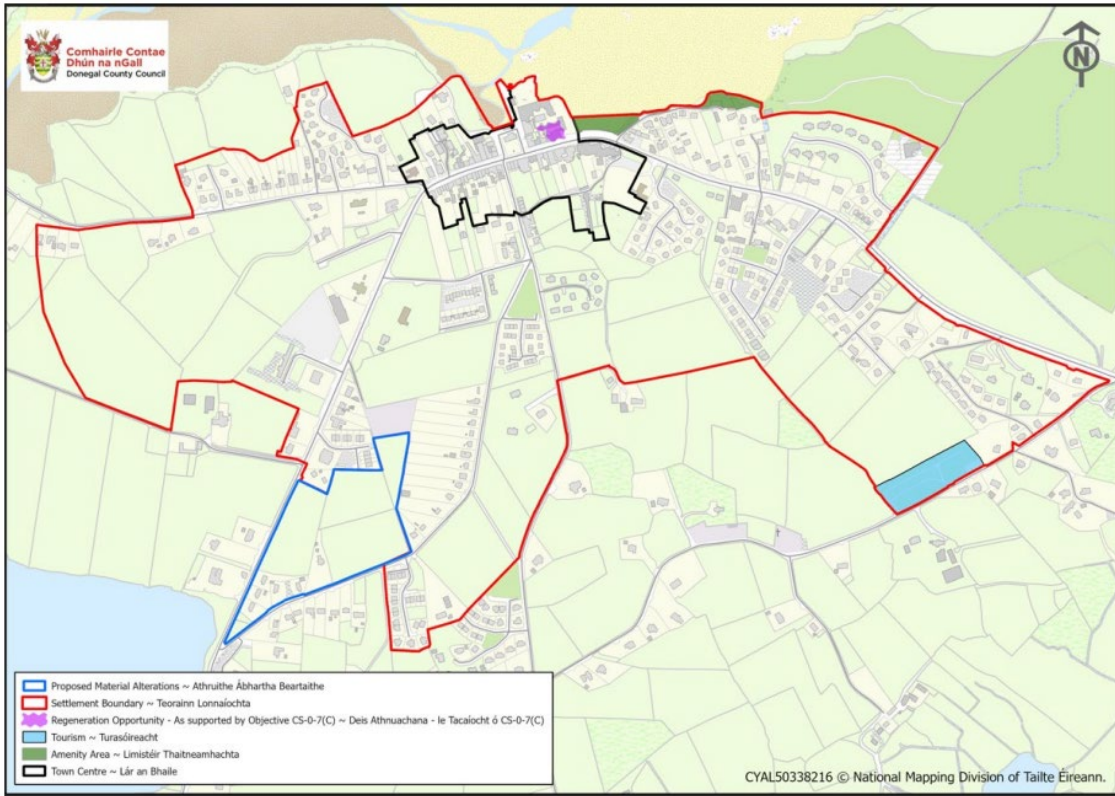


Aerial Photo:



Dunfanaghy Settlement Framework – extend settlement boundary to include lands identified in blue outline

Material Alterations: extension of boundary

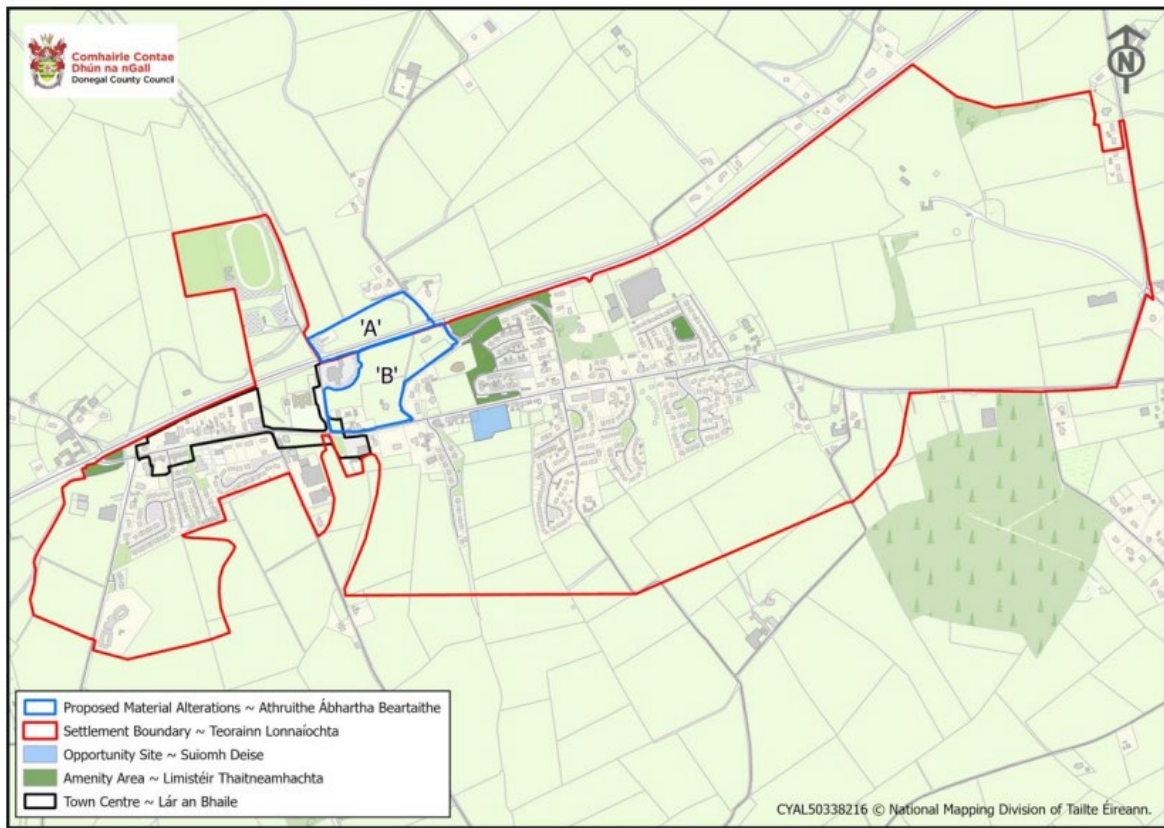


Aerial Photo:



Newtowncunningham Settlement Framework – extend settlement boundary to include lands labelled “A” and extend ‘Town Centre’ objective “B”

Material Alterations: extension of boundary (A) and extension of ‘town centre’ objective boundary

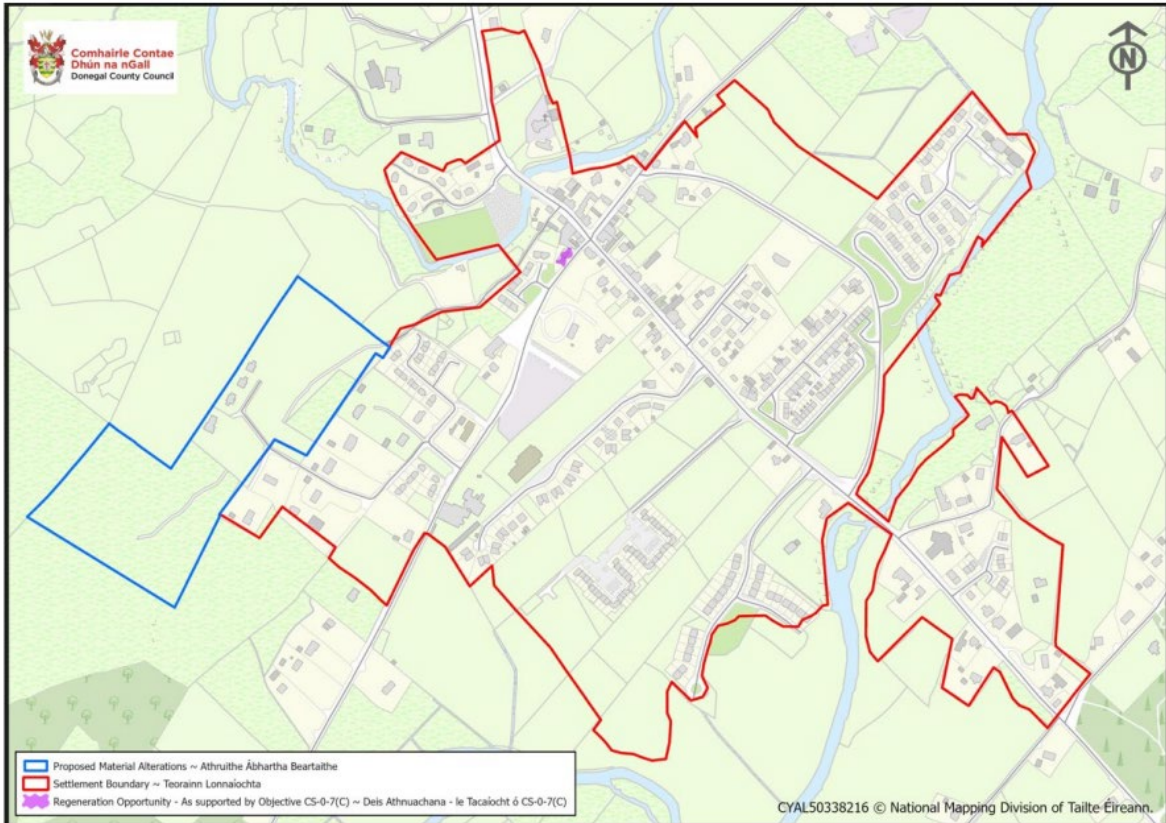


Aerial Photo:



Kilmacrennan Settlement Framework – extend settlement boundary to include lands identified in blue outline

Material Alterations: extension of boundary





Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Aerial Photo:





Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

25th June 2024

Alan Dillon TD

Minister of State

Department of Housing, Local Government and Heritage

Custom House

Dublin 1

D01 W6X0

BY HAND AND BY EMAIL

**Re: Correction re: notice pursuant to section 31AM(8) of the Planning and
Development Act 2000 (as amended) – Donegal County Development Plan
2024-2030**

A chara,

I writing further to the section 31AM(8) notice letter and proposed draft Direction regarding the Donegal County Development Plan 2024-2030 (the 'Development Plan'), which was issued by the Office of the Planning Regulator (the 'Office') to your office on Wednesday, 12th June 2024.

Please be advised that, due to an administrative oversight, a reference to Buncrana was omitted from the Office's recommendation to the Minister. You will note that section 1.4.1 of the notice letter relates to residential zoning objectives in Buncrana, which were the subject of Recommendation 5 of the Office's submission to the draft Development Plan and MA Recommendation 2 of the Office's submission at Material Alterations stage. This section provides rationale for recommending that the Minister exercises his function under section 31 of the Planning and Development Act 2000, as amended, to direct the planning authority to delete the following zoning objective from the adopted Development Plan:

- Buncrana NR 2.16, i.e. the subject land reverts to Local Environment from New Residential (Phase 2) as per MA 18(b).17.

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However, while the notice letter outlines this recommended action and provides rationale for same, this was inadvertently omitted from section 3 of the notice letter and point 2 of the proposed draft Direction. Please be advised that this was an administrative error and does not reflect the evaluation of the Office, as exhibited by the inclusion of Buncrana in section 1.4.1 of the notice letter.

For clarity, please note that the below update (highlighted in red) should be inserted under point (v) in section 3 – subsection a (Recommendation to the Minister) of the notice letter, and point (2) a of the proposed draft Direction:

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

(vi) Buncrana NR 2.16, i.e. the subject land reverts to Local Environment from New Residential (Phase 2) as per MA 18(b).17.

Please do not hesitate to contact me should you have any queries.

Yours sincerely,



Niall Cussen

Planning Regulator