

Chief Executive's Report on proposed Material Alterations to Draft Callan Local Area Plan 2019



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Kilkenny County Council

Colette Byrne,
Chief Executive

Sean McKeown,
Director of Services

Denis Malone,
Senior Planner

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1. Introduction

This report forms part of the statutory procedure for the making of a Local Area Plan (LAP). It addresses the submissions received during the 4 week public consultation period, from the 8th of February 2019 to 8th of March 2019, in relation to the Proposed Material Alterations to the Draft Callan LAP.

The purpose of the report is to:

- (a) Report on the written submissions/observations received during the public consultation period.
- (b) Set out the Chief Executive's response to the issues raised in the submissions/observations and;
- (a) Make recommendations to the Elected Members on the issues arising from the consultation process.

This report is being furnished to the Elected Members of Kilkenny County Council in accordance with Section 20(3)(l) of the Planning and Development Act 2000, as amended, for their consideration.

1.1 Details of Public Display

The documents put on public display for the Proposed Material Alterations to the Draft Local Area Plan were:

- Proposed Material Alterations to the Draft LAP
- Public Notice
- Appropriate Assessment Report
- Strategic Environmental Assessment Report

The documents were placed on the consult.kilkenny.ie consultation website and on the Council's own website. Hard copies of the documents were on public display in the following locations:

- Planning Office, Kilkenny County Council, County Hall, John Street, Kilkenny
- Callan Area Office
- Callan Library, Clonmel Road, Callan, Co. Kilkenny

Submissions could be made by:

- Email to ourplan@kilkennycoco.ie
- Online at consult.kilkenny.ie
- Written submissions to Denis Malone, Senior Planner, Planning Department, Kilkenny County Council, County Hall, John Street, Kilkenny.

2. Submissions Received

In total, 8 submissions were received to the Proposed Material Alterations to the Draft Callan Local Area Plan, as set out below.

Ref.	Name
KK-C95-1	Peter Thomson
KK-C95-2	Environmental Protection Agency
KK-C95-3	Department of Housing, Planning and Local Government
KK-C95-4	TII (Transport Infrastructure Ireland)
KK-C95-5	Irish Water
KK-C95-6	Peter Sweetman
KK-C95-7	Christopher O'Keeffe
KK-C95-8	Enya Kennedy

3. Summary of Issues Raised, Chief Executive's Response and Recommendations

3.1 Submissions from Statutory bodies

Ref	Name
KK-C95-1	Peter Thomson
Summary: The site is already partially developed with 3 completed houses and proposed housing infrastructure. The balance of the land clearly has the capacity for in excess of the proposed 20 or so low density sites. Part of the site is also to be the subject of a masterplan. It is unclear how the existing houses (3) and existing services, designed to provide for a number of medium density houses, fit into the definition of "Low Density Residential". It is requested this be clarified as a non- material addition to the final LAP.	
Response: The Masterplan needs to be agreed with the Planning Authority and could provide for innovative solutions such as incorporating existing house bases by combining them and using existing roads, pipes and ducting in a way that would not render them obsolete.	
Recommendation: The following clarification is recommended in section 4.2.2 and section 10.6.3 <i>While the site capacity was calculated at 20 low density units, recognition is given to the existing infrastructure in place and the final housing provision will utilise the use of existing infrastructure on the lands while at the same time providing an opportunity to maximise low density housing in the form of serviced sites in accordance with National Planning Objective 18(b).</i>	

Ref	Name
KK-C95-2	EPA
Summary: The EPA requests that KCC considers including a commitment that a Construction Environmental Management Plan (CEMP) is required in relation to the removal of the buffer zone surrounding the river. The plan will ensure that appropriate mitigation measures and associated monitoring are adequately implemented.	
Response: The following measure was (and continues to be) included in Table 4 of the NIR for the draft LAP <i>"Contractors appointed to undertake any construction works within Callan</i>	

town centre, areas in close proximity to the King's River or where there is an ecological connection to the river will be informed of the sensitivities of the King's River and will be expected to provide site specific method statements detailing measures taken to protect the environment during all phases of works."

Project specific Method Statements and, as appropriate, CEMP would accordingly be required as standard for development projects within the LAP area and particularly for development along the King's River within Callan town to ensure appropriate measures and monitoring is implemented at project stage.

Recommendation:

No change recommended.

Ref	Name
KK-C95-3	Department of Housing, Planning & Local Government
Summary: The Department has no objection to proposed zoning amendments but recommends including the capacity of additional zonings MA2 (industrial) and MA4 (new residential) in Section 5.0 and 4.2 to demonstrate compliance with the core strategy.	
Response: Noted.	
Recommendation: Include the capacities of changes to zonings MA2 and MA4 to comply with the core strategy.	

Ref	Name
KK-C95-4	T.I.I
Summary: TII welcomes the alterations proposed (material alterations 39, 40, 41 and 42). TII has no further comment to make on the other proposed material alterations on display.	
Response: Noted.	
Recommendation: No further change.	

3.2 Other submissions

Ref	Name
KK-C95-5	Irish Water
Summary: Welcomes the inclusion of Irish Water's 'Menu of Appropriate Objectives/Policies for Water Services in Development Plans' in the Proposed Material Alterations to the Draft Callan LAP. Irish water suggests including the update to this menu (p.25 of Material Alterations) which is in the body of the online submission and not the attachment. Text as follows: "Menu of appropriate Objectives/Policies for Water Services in Development Plans General Policies in relation to Water Services a) To work closely with Irish Water to identify and facilitate the timely delivery of the water services required to realize the development objectives of this plan; b) To consult with Irish Water in the development of Plans, SDZs, etc in order to ensure the proposed spatial strategy takes account of: - the available capacity of the public water services infrastructure; - the need to protect and optimise existing and planned public water services infrastructure; - the need for sequential and phased development; - the financial and environmental implications of development in sensitive areas. c) Prior to granting planning permission the Council will ensure that adequate water services will be available to service development, and will require developers to provide evidence of consultation with Irish Water prior to applying for planning permission; d) To protect existing way leaves and buffer zones around public water services infrastructure through appropriate zoning and to facilitate the provision of appropriate sites for required water services infrastructure as necessary; Water Supply e) To protect both ground and surface water resources including taking account of the impacts of climate change, and to support Irish Water in the development and implementation of Drinking Water Safety Plans and the National Water Resources Plan; f) To promote water conservation and demand management measures among all water users, and to support Irish Water in implementing water conservation measures such as leakage reduction and network improvements. Wastewater Services g) To ensure that the Local Authority provides adequate storm water infrastructure in order to accommodate the planned levels of growth within the plan area and to ensure that appropriate flood management measures are implemented to	

protect property and infrastructure;

h) To require all new development to provide a separate foul and surface water drainage system and to incorporate sustainable urban drainage systems where appropriate;

i) To prohibit the discharge of additional surface water to combined (foul and surface water) sewers in order to maximise the capacity of existing collection systems;

j) To support Irish Water in the promotion of effective management of trade discharges to sewers in order to maximise the capacity of existing sewer networks and minimise detrimental impacts on sewage treatment works;

k) To ensure that all new developments connect to the public wastewater infrastructure, and to encourage existing developments that are in close proximity to a public sewer to connect to that sewer, subject to a connection agreement with Irish Water;

l) To ensure that the provision of private wastewater treatment facilities for residential development, other than single house systems, should not generally be considered by planning authorities. Irish Water will not retrospectively take over responsibility for developer provided treatment facilities or associated networks, unless agreed in advance;

m) The provision of single house septic tanks and treatment plants in the Plan area will be strongly discouraged to minimise the risk of groundwater pollution. Where such facilities are permitted, full compliance with the prevailing regulations and standards, including the EPA's Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (PE. ≤10) (EPA 2009), as may be amended, will be required;

n) To ensure that private wastewater treatment plants, where permitted, are operated in compliance with their wastewater discharge license, in order to protect water quality."

Irish water has no further comments to make.

Response:

Update noted.

Recommendation:

Include updated menu of appropriate Objectives/Policies for Water Services in Development Plans

Ref	Name
KK-C95-6	Peter Sweetman
Summary: The submission refers to a number of CJEU judgements and Case C-258/11, Peter Sweetman and Others v An Bord Pleanála in particular. In reference to C-258/11 it refers to 44: <i>"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and</i>	

definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This screening cannot state that, as the mitigation measures are of a general nature.

Response:

A full Natura Impact Report (NIR) was prepared for the draft Local Area Plan (LAP) and also for the material alterations to the Draft LAP. The document titled "Appropriate Assessment Screening Report and Natura Impact Report", contained a screening decision to proceed to the next stage ie. a full stage 2 Appropriate Assessment and the compilation of a NIR. The Natura Impact Report considered all the potential impacts of the Material Alterations on the integrity of the Natura 2000 sites.

All relevant legislative and associated requirements in relation to AA have been fulfilled to date.

Before adoption of the Plan, as is required by the legislation, an Appropriate Assessment (AA) Determination pursuant to the Planning and Development Act 2000, as amended, and for the purposes of Article 6(3) of the Habitats Directive will be made by the Council. This determination will carefully consider the reasoning and conclusions of all AA-related output prepared to date.

All other documents prepared and submitted during the Plan preparation process will also be considered in making this determination including the Plan for adoption (including any alterations and/or modifications) and written submissions made on the Draft Plan and associated documents while they were on public display.

Table 4 of the NIR sets out objective specific measures. In addition, the NIR for the draft LAP clearly states that projects arising from the plan / within the plan area will be subject to measures set out in the NIR as well as assessment of the effects on Natura 2000 sites at individual project level.

The risks to the ecological integrity of the European Sites, taking account of the qualifying interests, special conservation interests and conservation objectives, have been addressed by the inclusion of the aforementioned measures that will prioritise the avoidance of effects in the first place and mitigate effects where these cannot be avoided. In addition to the measures featured within the Plan, all lower level plans and projects arising through the implementation of the Plan will themselves be subject to AA when further details of design and location are known.

Having incorporated these mitigation commitments; the emerging determination it that adoption and implementation of the Plan will not have a significant adverse effect on the ecological integrity of any European Site, either individually or in

combination with any other plan or project¹.

Although the submission implies that the document is only a screening document, this is clearly not the case and all potential impacts are carefully considered and the findings are precise and definitive, and thus, through the conclusion, all scientific doubt as to the effects on protected sites is removed.

Recommendation:

No further change.

Ref	Name
KK-C95-7	Christopher O'Keeffe
Summary:	
1. Submission states 4 documents are available at Consult.Kilkenny.ie, being: • Proposed Material Alterations to the Draft Callan LAP • SEA of proposed Material Alterations • SFRA of Proposed Material Alterations to Callan Draft LAP • AA of Proposed Material Alterations to the Callan Draft LAP However, the submission further states that none of these documents are available at the Kilkenny City Library. It is submitted that all documents which are part of public consultations should be available in all public libraries during the consultation period.	
2. The required documentation, being "Environmental report"(1), "Appropriate Assessment Screening"(2) and "Natura Impact Statement"(3) were not available. The submissions states that all documentation, including Environmental reports, appropriate Assessment Screening and Natura impact Statement(NIS) which are part of the consultation should be available online at Concult.kilkenny.ie.	
3. The NIS is flawed as at screening stage, it is not appropriate to take into account measures intended to avoid or reduce the harmful effects, of the plan or project on that site. Reference is made to several ECJ cases related to the Habitats directive and Appropriate Assessment. Ruling quoted sting that an assessment cannot have lacunae and must contain complete, precise and definitive findings removing all scientific doubt of effect of works on site	

¹ Except as provided for in Article 6(4) of the Habitats Directive, viz. There must be:

- a) No alternative solution available,
- b) Imperative reasons of overriding public interest for the plan to proceed; and
- c) Adequate compensatory measures in place.

concerned.

4. Kilkenny county Council should follow guidelines "Managing Natura 2000 sites - The provisions of Article 6 of the Habitats Directive 92/43EEC" Brussels 21/11/2018

Response:

1. Hard copies of all the documents were available at:

- the Planning Office, John Street, Kilkenny
- The Callan Library
- The Callan Area Office

Electronic copies were available online and hence could be accessed at all the County's libraries, including the Kilkenny City Library.

2. (1) The "Environmental Report" is available online with the Draft LAP for Callan on Consult.Kilkenny.ie.

(2+3) The "Appropriate Assessment Screening report" and "Natura Impact Statement" (referred to as Natura Impact Report) were published in a single document titled "Appropriate Assessment Screening Report and Natura Impact Report", which was made available online at Consult.Kilkenny.ie and in hard copy at the Council offices in John Street, Kilkenny, the Callan area office and at the Callan Library.

3. A Natura Impact Report was prepared and an appropriate assessment carried out for the draft LAP and the material alterations to the Draft Local Area Plan. The document titled "Appropriate Assessment Screening Report and Natura Impact Report", contained a screening decision and a full stage 2 NIR. Mitigation measures were not proposed at the screening stage but at the second stage of the process i.e. NIR.

Although the submission implies that the document is only a screening document, this is clearly not the case and all potential impacts are carefully considered in the Natura Impact Report and the findings are precise and definitive, and thus, through the conclusion, all scientific doubt as to the effects on protected sites is removed.

4. The NIR will be updated to include, inter alia reference to the EU notice titled "Managing Natura 2000 sites- The provisions of Article 6 of the Habitats Directive 92/43EEC Brussels, 21/11/2018.

Recommendation:

No further change.

Ref	Name
KK-C95-8	Enya Kennedy
Summary: The submission states that 1. It is unclear whether the Conservation Objectives will be met under this plan 2. There have been no scientific surveys undertaken as part of the report, no report from Irish Water to indicate as to whether current waste water treatment plants have been assessed under this plan. 3. A stage 2 Appropriate Assessment screening report needs to be carried out.	
Response: 1. The purpose of the LAP is to provide for the proper planning and sustainable development of Callan town. The purpose of the Natura Impact Report which has been completed for the Draft LAP as well as for subsequent material alterations is to set out the implications for the site in view of the conservation objectives (See Paragraph 1.71 of the NIR) of the Natura 2000 site in question. Table 3 sets out the potential effects on key species and habitats of the River Barrow and River Nore SAC and the River Nore SPA. The NIR sets out conservation objectives of the Natura 2000 sites with potential to be affected by the proposed LAP. The NIR sets out the effects on the integrity of Natura 2000 sites, in the absence of mitigation, at Paragraph 1.80. The assessment was done based on best scientific methodology and evidence as required in accordance with the Ministerial guidance "Appropriate Assessment of Plans and Projects- guidance for Planning Authorities" (DoEHLG 2009). 2. The LAP objectives are strategic in nature and as such the potential impacts and effects are rather broad in nature. Irish Water made a submission and has no objections to the Material Alterations as proposed. The plan was based on the draft Callan Stage 1 Wastewater Capacity Register which shows headroom of multiples of the anticipated population increase in the current capacity of the Callan Wastewater Treatment Plant. A mitigation measure is however still included which requires that wastewater, surface water drainage and drinking water must be in place prior to any development. Also, every subsequent development project/application will be subject to full assessment in accordance with the Habitats Directive requirements and will have the mitigation measure above as a prerequisite. 3. A Natura Impact Report was prepared, and an appropriate assessment carried out for the draft LAP and for the material alterations to the Draft Local Area	

Plan and is contained in the report "Appropriate Assessment Screening Report and Natura Impact Report" which accompanied the Material Alterations. Table 4 of the NIR sets out objective specific mitigation measures. In addition, the NIR for the draft LAP clearly states that projects arising from the plan / within the plan area will be subject mitigation measures set out in the NIR as well as assessment of the effects on Natura 2000 sites at individual project level. Where projects are considered likely to result in significant effects on Natura 2000 sites, or where the significance of such effects are uncertain then the individual projects will be required to undergo appropriate assessment and project specific mitigation measures will be required to avoid adverse effects on the integrity of Natura 2000 sites.

Recommendation:

No further change.

4. Next Steps

The members shall consider the Chief Executive's Report and following this consideration the Local Area Plan shall be deemed to be made or amended by resolution, with all, some or none of the material alterations as published.

If the Members decide to change the material alteration of the plan by resolution, it shall be necessary that the resolution be passed by not less than half of the members of the planning authority.

A further modification to the material alteration:

- may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,
- Shall not be made where it refers to – an increase in the area of land zoned for any purpose, or an addition to or deletion from the record of protected structures.

A Stage 2 Natura impact report and a Report for Strategic Environmental Assessment accompany the Proposed Material Alterations to the Draft LAP.

5. Summary of Recommendations of the Chief Executive

In total 5 submissions were received on the Proposed Material Alterations to the Draft Callan LAP.

This report has addressed all submissions received in relation to the proposed material alterations.

I recommend that the draft LAP be adopted, with Material Alterations as proposed, in accordance with the requirements of the Planning and Development Acts 2000 (as amended)



Colette Byrne, Chief Executive