

Appropriate Assessment Determination in accordance with Regulation 42(11) of the European Communities (Birds and Natural Habitats) Regulations 2011-2015

Flood Risk Management Plan for the BANDON - ILEN River Basin (UoM20)

[1.] Legislative Context

The Habitats Directive (92/43/EEC) seeks to conserve natural habitats and wild fauna and flora by the designation of Special Areas of Conservation (SACs). SACs are selected for the conservation of Annex I habitats (including priority types which are in danger of disappearance) and Annex II species (other than birds). The Birds Directive (79/409/EEC) seeks to protect birds of special importance by the classification of Special Protection Areas (SPAs). SPAs are selected for the conservation of Annex I birds and other regularly occurring migratory birds and their habitats. The annexed habitats and species for which each site is selected correspond to the qualifying interests of the site; from these the conservation objectives of the site are derived. SACs and SPAs comprise the Natura 2000 network and are also known as European Sites.

An Appropriate Assessment (AA) is required under Article 6 of the Habitats Directive where a project or Plan, which is not directly connected with or necessary to the management of the site, is likely to give rise to significant effects upon a Natura 2000 Site.

Article 6(3)

Any Plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other Plans of projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the Plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

Article 6(4)

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a Plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

The above requirement for AA has been implemented in Ireland by the European Communities (Birds and Natural Habitats) Regulations 2011-2015 (the 'Habitats' Regulations) and the Planning and Development Acts 2000-2017, as amended.

[2.] Description of the Flood Risk Management Plan

The Flood Risk Management Plan ('the Plan') for the BANDON - ILEN River Basin (UoM20) has been prepared by the Office of Public Works and submitted to the Minister for Public Expenditure and Reform for approval in accordance with Section 19(1) of the European

Communities (Flood Risk Assessment & Management) Regulations 2010 to 2015.

The purpose of the Plan is to set out the strategy, including a set of proposed measures, for the cost-effective and sustainable, long-term management of flood risk in the River Basin, including the areas where the flood risk has been determined as being potentially significant.

This Plan, which is for the period of 2018-2021, is one of 29 Plans being published; each setting out the feasible range of flood risk management measures proposed for their respective River Basins. The preparation of these Plans represents a significant milestone in the implementation of Government policy on flood risk management, as set out in the Report of the Flood Policy Review Group (OPW, 2014), and addresses Ireland's obligations under 2007 EU 'Floods' Directive (EU, 2007/60/EC).

The Plan includes feasible measures developed through a range of programmes and policy initiatives including:

- Non-structural flood risk prevention and preparedness measures that are applicable nationally, aimed at reducing the impacts of flooding, that have been and are being developed to implement Government policy on flood risk management (OPW, 2004).
- Structural flood protection measures proposed for communities at significant flood risk, aimed at reducing the likelihood and/or degree of flooding, identified through the National Catchment Flood Risk Assessment and Management (CFRAM) Programme.

The CFRAM Programme has examined the flood risk, and possible measures to address the risk, in 300 communities throughout the country at potentially significant flood risk. These communities were identified through the Preliminary Flood Risk Assessment (PFRA - See Section 3 of the Plan), which was a national screening assessment of flood risk. The communities identified through the PFRA process as being at potentially significant flood risk in the BANDON - ILEN River Basin are set out in Section 3 of the Plan, along with the sources of flood risk that were deemed to be significant for each community. A set of flood maps, indicating the areas prone to flooding, has been developed and published for each of the communities.

The Plan builds on and supplements the national programme for flood protection works completed previously, that are under design and construction at this time or that have been set out through other projects or plans, and the ongoing maintenance of existing drainage and flood relief schemes.

A Strategic Environmental Assessment under the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004-2011 has been undertaken as part of the preparation of, and have been published with, the Plan.

The overall objective of the Plan is to manage and reduce the potential consequences of flooding, recognising other benefits and effects across a broad range of sectors including human health, the environment, cultural heritage and economic activity, through viable flood protection schemes and other measures informed by a sound understanding of the flood risk established through the preparation of flood maps.

A nationally consistent set of specific objectives relating to each of these sectors was developed for the preparation of the Plans. These specific objectives and the importance given to each are

listed in Section 1.4 of the Plan.

The Plan sets out the strategy, actions and measures that are considered to be the most appropriate at this stage of assessment and that are to an outline design and not at this point ready for construction (Section 1.5 and 6.1 of the Plan).

Further detailed design through a project-level assessment will be required for such works before implementation, along with project-level environmental assessment and appraisal (including the consideration of alternatives), further public and stakeholder consultation and engagement and a statutory planning process (Section 1.5 of the Plan).

This assessment may give rise at that stage to some amendment of the proposed works to ensure that they are fully adapted, developed and appropriate within the local context, and that they are compliant with environmental legislation (Sections 1.5 and 6.1 of the Plan).

The Plan will inform the progression of the preferred measures, but project-level assessments will need to be undertaken as appropriate under the relevant legislation for consenting to a Scheme or works that involves physical works and that may progress in the future. The approval / adoption of the Plan has not and does not confer approval or permission for the installation or construction of any physical works (Section 6.1 of the Plan).

The Plan will be reviewed by the Office of Public Works and other stakeholders by 2021.

[3.] Appropriate Assessment Process

3.1 Screening for Appropriate Assessment

This Flood Risk Management Plan is not considered to be directly connected with, or necessary to, the management of any designated sites.

As such, a screening for appropriate assessment of the Plan was carried out in accordance with Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations 2011-2015, to assess, in view of best scientific knowledge and in view of the conservation objectives of relevant European sites, if the Plan, individually or in combination with other Plans and projects, would be likely to have a significant effect on European Sites.

The screening report for Appropriate Assessment was prepared by ecologists at Mott McDonald on behalf of the Office of Public Works. The screening report produced by the ecologists concluded, on the basis of objective scientific information following screening that the final measures proposed within BANDON - ILEN River Basin (UoM20), were not likely to have a significant effect on a European site, individually or in combination with other plans or projects, and hence an Appropriate Assessment is not required. Section 6 of that Report concluded that the progression of preferred options for the AFAs in UoM 20 will have no significant effects on European Sites within the Natura 2000 network, as summarised in Table 6.2 of that Screening Report.

3.2 Consultation

The initial AA Report was made available as part of the public consultation on the (Draft) Flood Risk Management Plan from July to September 2016 on the OPW website (maps.opw.ie/FloodPlans/) and in hardcopy at the relevant Local Authority Offices on

behalf of the Office of Public Works, in accordance with Regulations 18(1) and 18(2) of the European Communities (Assessment and Management of Flood Risks) Regulations 2010-2015.

Further to the above-mentioned consultation, over 500 submissions were received in relation to the 29 Plans. These informed the finalisation of the Plans, and the SEA Statement summarises the influence of this consultation on the finalisation of the Plans.

3.3 Environmental Review of Material Submitted

Following the Office of Public Works providing copies of the Plan, the SEA Environmental Report / Statement and the AA Screening Report to the Department of Public Expenditure and Reform, ecologists at Fehily Timoney and Company carried out a review of the Plan, including but not limited to the SEA ER/Statement and the AA Screening Report, on behalf of the Department of Public Expenditure and Reform.

The findings of the review were that the Plan was not likely to have significant effects on the environment, and would not adversely affect the integrity of any European site.

[4.] Conclusion

The Minister for Public Expenditure and Reform, as a Second Authority as defined in Section 42(21) of the European Communities (Birds and Natural Habitat) Regulations 2011-2015, has taken account of the Screening for Appropriate Assessment by the Commissioners of Public Works in relation to the Plan. The Minister has considered the extent to which the scope of the Screening for Appropriate Assessment by the Commissioners of Public Works covers the issues required to be addressed by the Minister in an Appropriate Assessment of the Plan in view of the scope of the consent to be given by the Minister, and has been informed by an independent review, as described in Section 3.3 above. The Minister has not identified any issues that have not, in that regard, been adequately addressed.

The Minister has carried out a screening for Appropriate Assessment in accordance with Regulations 42(1), 42(7) and 42(21) of the European Communities (Birds and Natural Habitat) Regulations 2011-2015 and has had regard to the measures set out in the Flood Risk Management Plan, and the ecologist review undertaken by Fehily Timoney and Co, and, noting that:

- approval of the Plan does not confer consent to the construction of any physical works;
- in respect of physical works / flood relief schemes, the Plan sets out only the recommendation to progress the project-level assessment and development (rather than the implementation) of Flood Relief Schemes, including the environmental assessment as necessary and further public consultation, for refinement and preparation for Planning / Exhibition and, if and as appropriate, implementation;
- Environmental Impact Assessment and Project-level Appropriate Assessment Screening and Appropriate Assessment must be undertaken in accordance with the relevant legislation where relevant as part of the consenting process for the progression of proposed measures that involve physical works;

- if the AA of a project at site level determines that adverse effects on the integrity of any European Site are likely, or cannot be ruled out, the project will not be pursued without an Assessment of Alternatives being undertaken to identify alternative options that would not lead to adverse effects on the integrity of any European Site. This would be undertaken prior to any further decisions on how to address the flood risk in the relevant area or prior to progressing to further stages of AA;

it has been concluded, on the basis of objective scientific information following screening that measures within the BANDON - ILEN River Basin (UoM20), are not likely to have a significant effect on a European site, individually or in combination with other plans or projects, and hence an Appropriate Assessment is not required.