

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 TRALEE BAY - FEALE River Basin (UoM23)

[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, may 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 Tralee Bay - Feale River Basin (UoM23) 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 Tralee Bay - Feale 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, and an Appropriate Assessment under the European Communities (Birds and Natural Habitats) Regulations 2011-2015 where appropriate, have 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 involve 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).

This 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 identified in Section 3.1, Table 1 of the Natura Impact Statement).

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 a European site. It was determined under Regulation 42(6) that an appropriate assessment was required as it could not be excluded that the Plan, individually or in combination with other Plans and projects, would have a significant effect on a European Sites. The Plan is considered to have the potential to have a significant effect on the European Sites, either individually or in combination with other Plans or projects, and is hence subject to appropriate assessment of its implications for relevant sites in view of those sites' conservation objectives.

The screening report for Appropriate Assessment was prepared by ecologists at Jacobs on behalf of the Office of Public Works. The screening report concluded that it could not be excluded, on the basis of objective scientific information following screening, that the implementation of certain measures would have a significant effect on the

qualifying interests of the European Sites. Therefore, it was concluded that a Natura Impact Statement should be prepared and an Appropriate Assessment carried out.

3.2 How findings of the AA process influenced option appraisal & selection

As an integral part of the CFRAM Programme, all potential flood risk management measures were screened, and, where appropriate, appraised in detail against a pre-defined set of objectives. One such objective was to support the objectives of the Habitats Directive (i.e. to avoid detrimental effects to, and where possible enhance, the Natura 2000 network, protected species and their key habitats, recognising relevant landscape features and stepping stones.)

At the outset of the option appraisal, certain measures were immediately excluded from further consideration, on the basis that they would clearly have detrimental impacts on the European Sites (which could not be mitigated), and there existed alternative solutions. The potential impacts of all other measures were next assessed to determine if there may be detrimental effects on the integrity of the European Sites (without mitigation) and these measures were then scored and ranked using a system known as a Multi-Criteria Analysis (MCA) - a scoring system that takes account of all the defined objectives identified as being most important within each Community (e.g. the local economic activity, community facilities, infrastructure, the environment and the cultural heritage of the area). These included the Objective to support the objectives of the Habitats Directive, the scoring of which was informed by the analysis undertaken as part of the AA. The preferred option for managing the flood problems in each Community was identified using the MCA methodology described above as well as economic and environmental assessments, taking account of the opinion of the local community.

3.3 Natura Impact Statement

A Natura Impact Statement was prepared by Jacobs on behalf of the Office of Public Works, and was made available as part of the public consultation on the (draft) Flood Risk Management Plan from July 2016 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. The Natura Impact Assessment concluded (in Section 12) that with the dual approach of 'down the line' project level assessment and imposition of specific and exacting plan-level mitigation, the draft FRMP for UoM 23 would have no adverse effects on the integrity of any European sites, either alone or in-combination with other plans or projects.

3.4 Consultation

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 Natura Impact Statements, and the SEA Statement summarises the influence of this consultation on the finalisation of the Plans.

3.5 Mitigation

Projects stemming from the Plan will apply a range of standard processes and measures that will mitigate potential environmental impacts. While the applicability of processes and particular measures will be dependent on the nature and scale of each project,

examples of typical processes and measures that will be implemented where applicable at the different stages of project implementation including at the Consenting Process, Pre-construction / Design Stage, and Construction Stage, as detailed in Section 6 of the Plan.

3.6 Environmental Review of Material Submitted

Following the Office of Public Works providing copies of the Plan, the SEA Environmental Report / Statement and the Natura Impact Statement 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 findings of the Natura Impact Statement and SEA ER/Statement, 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 Appropriate Assessment by the Commissioners of Public Works in relation to the Plan and of the Natura Impact Statement. The Minister has considered the extent to which the scope of the Appropriate Assessment by the Commissioners of Public Works and the associated Natura Impact Statement 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 3.6 above. The Minister has not identified any issues that have not, in that regard been adequately addressed.

The Minister has carried out an Appropriate Assessment in accordance with Regulations 42(11), 42(12) and 42(21) of the European Communities (Birds and Natural Habitat) Regulations 2011-2015 and has had regard to the findings of the Natura Impact Statement, the measures set out in the Flood Risk Management Plan, and the ecologist review undertaken by Fehily Timoney and Co.

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;
- Measures have been identified that will mitigate potential environmental impacts at project level;
- 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 a 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 that the Flood Risk Management Plan for the TRALEE BAY - FEALE River Basin (UoM23) will not, either individually or in combination with other plans or projects, adversely affect the conservation objectives or integrity of any European site.