



9th April 2021

TEN-T CDP Variation,
Central Planning Unit,
Donegal County Council,
County House,
Lifford,
Co. Donegal,
F93 Y622.

Re: “Proposed Variation to the County Donegal Development Plan 2018-2024 in respect of the TEN-T Priority Route Improvement Project, Donegal (Variation No. 1)”

A chara,

Thank you for your authority's work in preparing the “Proposed Variation No.1 to the County Donegal Development Plan 2018-2024 in respect of the TEN-T Priority Route Improvement Project, Donegal (Variation No. 1)” (the Proposed Variation).

The Office of the Planning Regulator (the Office) wishes to acknowledge the considerable and evident work your authority has put into the preparation of the Proposed Variation against the backdrop of an evolving national and regional planning policy and regulatory context, which included taking account of the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES) for the Northern and Western Regional Assembly area and the establishment of the Office.

As your authority is aware, a key function of the Office is the assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. The Office has evaluated and assessed the Proposed Variation under the provisions of sections 31AM(1) and (2) of the *Planning and Development Act 2000*, as amended (the Act) and this submission has been prepared accordingly.

Recommendations issued by the Office relate to clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28. As such, the planning authority is required to implement or address recommendation(s) made by the Office to ensure consistency with the relevant policy and legislative provisions.

Observations take the form of a request for further information, justification on a particular matter, or clarification regarding particular provisions of a plan on issues that are required to ensure alignment with policy and legislative provisions. The planning authority is requested by the Office to action an observation. A submission also can include advice on matters that the Office considers would contribute positively to the proper planning and sustainable development of the area. The planning authority is requested by the Office to give full consideration to the advice contained in a submission.

On adoption of the Proposed Variation, the Office will consider whether the Variation has been made in a manner consistent with the recommendations of the Office and whether the plan sets out an overall strategy for the proper planning and development of the area concerned.

Overview

The Office welcomes the planning authority's facilitation of the future upgrading of the TEN-T comprehensive network in County Donegal, which Ireland is required to bring up to standard by 2050 under EC TEN-T Regulations (EU) No 1315/2013.

The Office acknowledges that the proposed TEN-T Priority Route Improvement Project, Donegal (“TEN-T PRIPD”) has the potential to enhance cross border connectivity and to facilitate the development of the North West City Region and the Atlantic Economic Corridor. This will enable Donegal to achieve the strategic objectives of the RSES for the Northern and Western Regional Assembly area and National Planning Framework Project Ireland 2040.

The submission below has been prepared to provide a strategic level input to your authority in finalising the Proposed Variation. It is within the above context that the submission sets out one recommendation, two observations and advice under the following key themes:

1. Land Use Zoning Objectives
2. Built heritage
3. Natural heritage

1. Land Use Zoning Objectives

Section 2.9 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) states that a development plan should identify any land required for future national road projects including objectives that retain required lands free from development. It further provides that development objectives, including zoning of land, must not compromise the route selection process, including in consideration of the achievement of value for money for the taxpayer and the implications of zoning objectives for the cost of lands to be acquired.

Three preferred route corridors identified in the Proposed Variation traverse existing land use zoning objectives for the settlements of Letterkenny, Lifford/Strabane and Ballybofey/Stranorlar. The Proposed Variation revises the existing land use zoning objectives to take account of the TENT-T PRIPD within the proposed route corridor. It also provides for rewording of a number of existing objectives and policies to facilitate and give priority to the TEN-T-PRIIRD schemes, including Objective T-O-1 and T-O-7, and the

insertion of new policies to further give precedence to the schemes (e.g. Policy T-O-1A). The Office is satisfied that this approach is consistent with the aforementioned Guidelines.

It is proposed to revise the wording of Policy T-P-1 in order to, inter alia, facilitate development related to the TEN-T PRIPD within land zoned TEN-T PRIPD/Established Development, TEN-T PRIPD/Strategic Reserve, TEN-T PRIPD/General Employment, TEN-T PRIPD/Open Space and TEN-T PRIPD/Amenity. However this policy does not extend to the proposed revised land use zoning objectives for Ballyboffey/Stranorlar – objectives TEN-T PRIPD/Opportunity Site, or to TEN-T PRIPD/Recreation & Amenity or to TEN-T PRIPD/Local Environment. This inconsistency should, therefore, be addressed in light of the requirements of section 2.9 of the Guidelines.

Recommendation 1 – Land use zoning objectives Ballyboffey/ Stranorlar

Having regard to the requirements of section 2.9 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), issued by the Minister under section 28, the planning authority is required to revisit the proposed variation of Policy T-P-1 to ensure that the development of the TEN-T PRIPD is to be facilitated within each and all of the land use zoning objectives concerned, including those within Ballyboffey/Stranorlar.

It is also noted that the zoning objectives for Ballyboffey/Stranorlar are included under the *Seven Strategic Towns Local Area Plan 2018-2024*, and not the County Development Plan. The planning authority will be aware that where an objective of an LAP is no longer consistent with the development plan, the planning authority must amend the LAP as soon as may be, and not later than one year following the making of the development plan (Section 19(2B) of the Act refers). Consequently, the Office advises that where any objective of an LAP is no longer consistent with the development plan, the planning authority must amend the LAP and ensure that clarity relating the intention to do so is provided for members of the public.

Observation 1 – Land use zoning objectives

Having regard to the provisions of section 19(2B) of the Act, the planning authority is advised to include an objective in the proposed variation committing to an amendment of the land use zoning objectives for Ballyboffey/Stranorlar under the *Seven Strategic Towns LAP 2018-2024* in order to ensure consistency with the land use zoning objectives provided for under the proposed variation.

2. Cultural Heritage

It is mandatory for Development Plans under Section 10(2)(c) of the Act to include policies and objectives pertaining to “*the conservation and protection of the environment including, in particular, the archaeological heritage*”. In addition, detailed provisions for protection and preservation of archaeological heritage are contained in the National Monuments Acts. Departmental guidance on a *Framework and Principles for the Protection of the Archaeological Heritage* (DAHGI, 1999), as referred to in Policy AH-P-1 (subject of the proposed variation) is also considered relevant.

The Proposed Variation provides that priority shall be given to the TEN-T PRIPD in cases where conflicts may arise with archaeology heritage (revised policies AH-P1, AH-P-3, AH-P-4 and AHP-5, refer). This approach may, however, risk undermining the conservation and protection afforded such heritage before the significance of any conflict has been determined. In this regard, the planning authority will be aware that TII has produced *Guidelines for the Assessment of Archaeological Heritage Impacts of National Road Schemes* (National Roads Authority, 2005) to inform the planning and assessment process.

The Office is not a competent authority for the purposes of SEA or for Appropriate Assessment. However it is required to consider the consistency of the proposed variation with section 28 guidelines, including *Implementation of SEA Directive (2001/42/EC): Assessment of the Effects of Certain Plans and Programmes on the Environment Guidelines for Regional Authorities and Planning Authorities* (November, 2004). These set out recommendations on the carrying out of SEA of plans.

The Environmental Report accompanying the proposed variation states that uncertain impacts on cultural heritage will be protected (through avoidance) having regard to archaeological heritage objectives in the development plan, including Policies AH-O-1 and AH-P-1, AH-P-4, AH-P-5. It is not clear, however, if the conclusion of the Environmental Report regarding potential impacts on archaeological heritage is supported having regard to the proposed rewording of policies AH-P-1, AH-P-4 and AH-P-5.

Observation 2 – Cultural Heritage

The planning authority is advised to revisit the proposed rewording of policies AH-P-1, AH-P-4 and AH-P-5, in consultation with the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, to ensure that objectives for the conservation and protection of archaeological heritage, in accordance with mandatory objectives under section 10(2)(c) of the Act, are not undermined within the proposed route corridors of the TEN-T-PRIPD.

Having regard to the *Implementation of SEA Directive (2001/42/EC): Assessment of the Effects of Certain Plans and Programmes on the Environment Guidelines for Regional Authorities and Planning Authorities (November, 2004)*, a review of the conclusions of the SEA Environmental Report concerning potential for adverse archaeological impacts arising from the proposed variation may also be appropriate in the context of the proposed changes to the aforementioned policies.

3. Natural Heritage

The Office notes from the *Natura Impact Report* that Section 2 of the proposed route corridors, relating to N56/N13 Letterkenny to Manorcunningham, traverses three European sites and is adjacent a fourth. The potential for adverse impacts on the integrity of these Natura 2000 sites were considered in the Appropriate Assessment and mitigation measures were proposed and, accordingly the NIR concluded that:

Therefore, considering the Proposed Variation and the specific mitigation measures that require statutory approvals to prevent impact, it was found that no direct, indirect or

cumulative significant effects on the Natura 2000 network of sites or its integrity were likely from the Proposed Variation to the CDP.

The Office notes the concerns raised by the Development Applications Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media regarding the potential impact on the Lough Swilly SAC (Site Code: 002287) and SPA (Site Code 4075) arising from the proposed change in zoning priorities identified on 'Map 12.1 B Letterkenny Land Use Zoning Map' associated with the bridge area of Section 2 of the TEN-T PRIPD. The planning authority should consult with the DAU NPWS on these concerns.

In summary

The Office requests that your authority addresses the recommendations and observations outlined above. As you are aware, the report of the chief executive of your authority prepared for the elected members under section 13 of the Act must summarise these recommendations and the manner in which they will be addressed.

At the end of the process, your authority is required to notify this Office within five working days of the decision of the planning authority in relation to the proposed Variation. Where your authority decides not to comply with the recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with the recommendations made by this Office, then the chief executive shall inform the Office and give reasons for this decision.

Please feel free to contact the staff of the Office in the context of your authority's responses to the above, which we would be happy to facilitate. Contact can be initiated through plans@opr.ie.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ailbhe Connolly".

Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations