



Oifig an  
Rialaitheora Pleanála  
Office of the  
Planning Regulator

15<sup>th</sup> October 2024

Alan Dillon TD,  
Minister of State for Local Government and Planning,  
Department of Housing, Local Government and Heritage,  
Custom House,  
Dublin 1,  
D01 W6X0.

**BY HAND AND BY EMAIL**

**Re: Notice Pursuant to section 31AO(7) of the Planning and Development Act  
2000 (as amended) – Ballina Local Area Plan 2024-2030**

A chara,

I am writing to you in relation to the recent adoption by the elected members, of the Ballina Local Area Plan 2024-2030 (the Local Area Plan), of Mayo County Council (the Planning Authority).

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 31AO(7) of the Planning and Development Act 2000 (as amended) (the Act) to issue a Notice to you on the basis that, having considered the Local Area Plan, the Office is of the opinion that:

- a) the Local Area Plan has not been made in a manner consistent with recommendations of the Office, dated the 16<sup>th</sup> July 2024, which required specific changes to the Local Area Plan to ensure consistency with the core strategy of the Mayo County Development Plan 2022-2028 (the County Development Plan) and to ensure consistency with the objectives of the County Development Plan to require sustainable, compact, sequential growth and urban regeneration in Ballina, strengthen the core of the settlement and promote compact development within the existing built up footprint in preference to edge of centre locations, to avoid the inappropriate extension of services and utilities, and to encourage sustainable travel under objectives

CSO 4, CSO 5, SSO 3, SSO 6, GSO 1 and SO 12, and the regional policy objectives (RPOs) of the Regional Spatial and Economic Strategy for the Northern and Western Regional Assembly (RSES) in respect of compact growth and to support regeneration and renewal and increase population living within settlements under objectives RPO 3.1, RPO 3.2(c), and RPO 7.20, and to support sustainable travel patterns.

Specifically, the Local Area Plan zones land for residential development in peripheral locations, and/or non-sequential locations, and/or outside the CSO Settlement boundary<sup>1</sup> (CSO Settlement boundary), and/or without adequate infrastructure, and/or does not support sustainable travel patterns;

- b) the Local Area Plan has not been made in a manner consistent with recommendations of the Office, dated the 16<sup>th</sup> July 2024, which required specific changes to the Local Area Plan to ensure consistency with objective INP 14 of the County Development Plan and RPO 3.10 of the RSES for flood risk management, and The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009) (Flood Guidelines);

Specifically, the Local Area Plan includes material alterations to zone land for residential development in areas at risk of flooding;

- c) the decision of the Planning Authority results in the making of a local area plan in a manner that is inconsistent with the recommendations of the Office, and with the County Development Plan; and
- d) as a consequence, the use by you of your function 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 letter. This letter is a Notice to you pursuant to section 31AO(7) of the Act.

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<sup>1</sup> This means within the existing built-up footprint of all sizes of urban settlement, as defined by the CSO in line with UN criteria i.e. having a minimum of 50 occupied dwellings, with a maximum distance between any dwelling and the building closest to it of 100 metres, and where there is evidence of an urban centre (shop, school etc.).

## **1. Background**

### **1.1 Draft Ballina Local Area Plan 2024-2030**

The draft Local Area Plan was on public display from the 19<sup>th</sup> December 2023 to 8<sup>th</sup> February 2024.

The Office made a submission on the draft Local Area Plan dated 8<sup>th</sup> February 2024 containing 6 recommendations and 5 observations. Specifically, issues related to:

- Recommendation 1 – Core Strategy
- Recommendation 2 – Infrastructure Assessment
- Recommendation 3 – Town Centre Regeneration
- Recommendation 4 – Transport and Mobility
- Recommendation 5 – Flood Risk Management
- Recommendation 6 – Enterprise and Employment Zoning

Subsequently, the Director of Services sent a notice letter under section 20(3) of the Act dated 17<sup>th</sup> June 2024 advising the Office of the proposed material alterations to the draft Local Area Plan (the Material Alterations).

### **1.2 Material Alterations to the draft Ballina Local Area Plan 2024-2030**

The elected members, having considered the draft Local Area Plan and the Chief Executive's Report on the public consultation regarding the draft Local Area Plan, (CE's Report draft stage) received on 21<sup>st</sup> March 2024, resolved to alter the draft Local Area Plan. The Material Alterations were on public display from the 18<sup>th</sup> June 2024 to the 16<sup>th</sup> July 2024.

The Material Alterations included:

- a series of individual material alterations relating to the zoning of land for residential development, including MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36.

The Office made a submission dated 16<sup>th</sup> July 2024 on the Material Alterations containing three (3) recommendations:

- MA Recommendation 1 – Residential land use zoning
- MA Recommendation 2 – Edge of Town Centre
- MA Recommendation 3 – Built Heritage.

### **1.3 Adopted Ballina Local Area Plan 2024-2030**

The elected members of the Planning Authority resolved to make the Local Area Plan at a special meeting on the 18<sup>th</sup> September 2024.

Subsequently, the Chief Executive sent a letter dated 25<sup>th</sup> September 2024 under section 31AO(5) of the Act, (the 31AO(5) notice letter), advising of the making of the Local Area Plan. A report from the Chief Executive, stated as submitted under section 31AO(5) of the Act, is attached to the notice letter, outlining the Chief Executive's recommendations and the reasons for the decision of the Planning Authority to make the Local Area Plan in a manner which is inconsistent with the recommendations made by the Office. The Office agrees with the 31AO(5) notice letter that the Local Area Plan has been made in a manner which is inconsistent with the recommendations made by the Office.

Specifically, the elected members made the Local Area Plan with the residential zoning objectives under MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36 (MA Recommendation 1); MA 38 for Edge of Town Centre zoning objective (MA Recommendation 2); and the residential zoning objective under MA 27 (MA Recommendation 3).

In respect of MA Recommendation 2 and MA 38 to rezone c.1.6ha of land from Education in the draft Local Area Plan to Edge of Town Centre, the Office notes that the majority of these lands comprise the Sisters of Mercy Convent and School on McDermott Street, which is a protected structure (Ballina RPS no. 10), and associated structures in the curtilage of the protected structure such as the stone boundary walls. These elements significantly limit the scale of potential retail and other uses which would be more appropriately located in the town centre. The Office also notes that a new school building is provided on the adjacent Education zoned lands. On balance, the Office considers that a recommendation to the Minister to issue a draft Direction is not warranted in respect of this matter.

In respect of MA Recommendation 3 and MA 27 to zone 0.1ha of land from Recreation and Amenity in the draft Local Area Plan to New Residential immediately adjacent a protected structure, Ballina RPS no.4 Entrance Arch, the Office considers that, on balance, this is a matter that can be dealt with by the application of the architectural heritage policies of the County Development Plan through the development management process, and considers that a recommendation to the Minister to issue a draft Direction is not warranted in respect of this matter.

The 31AO(5) notice letter does not identify that the Planning Authority did not accept any of the recommendations of the Office in respect of its submission to the draft Local Area Plan. Having reviewed the adopted Local Area Plan, the Office notes that the Settlement Capacity Assessments in Appendix 1 will be updated in the Local Area Plan, subject to the below.

The Office is satisfied that the recommendations to the draft Local Area Plan have been satisfactorily addressed or that a recommendation to the Minister to issue a draft Direction is otherwise not warranted.

The outstanding matters are, therefore, confined to the matter of the residential zoning objectives under MA Recommendation 1, specifically MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36.

These outstanding matters are considered in more detail below.

#### **1.4 MA Recommendation 1**

MA Recommendation 1 required the Planning Authority to make the Local Area Plan without a number of peripheral and non-sequential residential zonings considered contrary to the principles of compact and sustainable growth and, in the case of MA 30, MA 35 and MA 36, on lands at risk of flooding, and in the case of MA 29 and MA 35, on lands within the Constraints Study Area for the Ballina Bypass stating:

##### **MA Recommendation 1 – Residential land use zoning**

Having regard to the provision of new homes at locations that can support compact and sustainable development and the co-ordination of land use zoning,

infrastructure and services, including sustainable travel patterns, and in particular to:

- the Regional Spatial and Economic Strategy including RPO 3.1 and 3.2(c) compact growth; RPO 3.9, RPO 7.20 and key future priority for Ballina town centre regeneration; RPO 3.10 flood risk management; and RPO 6.5 capacity and safety of national roads;
- the Mayo County Development Plan 2022-2028, including: the core strategy and associated objective GSO 1; objectives CSO 5 compact growth; CSO 4, SSO 3 and SSO 6 regeneration, compact, sequential and sustainable growth; SO12, MTO 4, MTO 5 and MTO 7 in relation to active and sustainable transport and modal shift; MTO 30 to progress national road schemes; and INP 14 flood risk management;
- the Development Plans, Guidelines for Planning Authorities (2022) in respect of the policy and objective under section 6.2.1 for zoning to be informed by the settlement capacity audit, and the policy and objective under section 6.2.3 to implement a sequential approach to zoning;
- the Planning System and Flood Risk Management Guidelines (2009), as amended;
- the Spatial Planning and National Roads Guidelines for Planning Authorities (2012);
- the infrastructural assessment and settlement capacity audit in Appendix 1; and the total area of land proposed to be zoned New Residential; and the modal shift targets under the draft Ballina Local Area Plan 2024-2030, as proposed to be amended; and
- the Government's National Sustainable Mobility Policy (2022), the Climate Action Plan 2024 and the Climate Action and Low Carbon Development Act 2015, as amended;

the Planning Authority is required to make the Plan without the following material alterations:

- (i) MA 29 (c.3.1ha), Gorteen;

- (ii) MA 30 (c.7.8ha), Laghtadwannagh;
- (iii) MA 31 (c.0.9ha), Station Road;
- (iv) MA 33 (c.0.7ha), Garrankeel;
- (v) MA 34 (c.0.1ha), Garrankeel;
- (vi) MA 35 (c.15ha) Abbeyquarter; and
- (vii) MA 36 (c.6ha) Laghtadwannagh.

The Chief Executive's Report (CE's Report material alterations stage) on the public consultation regarding the Material Alterations, details the Chief Executive's recommendation that the Local Area Plan be made without all seven of the above material alterations, namely MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36.

The elected members did not accept the Chief Executive's recommendation and made the Local Area Plan with MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36 for the following reasons:

*The Elected Members express frustration that their proposed zoning changes are consistently rejected by the executive and the Office of the Planning Regulator (OPR), despite being part of the planning process at both County Development Plan and Local Plan levels. They believe the planning process is hampered by excessive bureaucracy from higher levels of government, which makes local zoning proposals ineffective. Given the housing crisis, they highlight that there is a shortage of housing in Ballina, with high house prices and insufficient zoned land posing obstacles to developers. The Elected Members argue that more land should be zoned for residential use throughout the town to increase housing supply, limit emigration, support growth, and help reduce house prices.*

In respect of the need for more zoned land to increase housing supply, limit emigration, support growth, and help reduce house prices, the Office notes that the core strategy of the County Development Plan identifies a housing target of 511 homes for Ballina to 2028.

The adopted Local Area Plan<sup>2</sup> identifies a requirement for 29.73 ha of New Residential zoned to ensure a sufficient supply of zoned land, in addition to 2.33 ha of lands zoned Town Centre / Opportunity Sites and 4.66 ha Residential Infill lands. Excluding Material Alterations MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36, the Local Area Plan zones c.65 ha of New Residential land<sup>3</sup>, in addition to a further 15.5 ha of Strategic Residential Reserve.

There is, therefore, no evidential basis consistent with proper planning and sustainable development to support the decision to zone a further c.34 ha of New Residential lands in peripheral and non-sequential locations that do not support more sustainable travel patterns, and/or without adequate infrastructure services and utilities, and/or in areas at risk of flooding and/or within the Constraints Study Area for the N26 Ballina Bypass contrary to the objectives of the County Development Plan and the RSES.

In particular, the excessive zoning of peripherally and non-sequentially located land as New Residential is inconsistent with objective CSO 4 of the County Development Plan which seeks:

*To move towards more compact towns by promoting the development of infill and brownfield / consolidation / regeneration sites and the redevelopment of underutilised land within and close to the existing built-up footprint of existing settlements in preference to edge of centre locations.*

It is also inconsistent with County Development Plan objective SSO 3, which requires the consolidation of the footprint of Ballina through a focus on regeneration of the town centre infill and brownfield sites, and objective SSO 6, which seeks to strengthen the core of settlements through development of infill-sites, brownfield lands, derelict and vacant sites within the existing footprint of settlements and to develop outwards from the centre in a sequential manner. It is also inconsistent with RPO 7.20 for regeneration and with the associated RSES key future priority for regeneration of the Ballina town core.

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<sup>2</sup> Table 2.2, Ballina Local Area Plan 2024-2030.

<sup>3</sup> Appendix 1 Settlement Capacity Assessments, Ballina Local Area Plan 2024-2030.



The zoning of such extensive additional lands, particularly without the carrying out of a detailed Settlement Capacity Audit and infrastructure assessment, will also have significant implications for the cost and timing of delivery of infrastructural services during the plan period and does not make efficient and effective use of existing infrastructure and services, inconsistent with Objective GSO 1 of the County Development Plan to avoid the inappropriate extension of services and utilities. This objective applies the policy and objectives of the Development Plans, Guidelines for Planning Authorities (2022) that zoning should be informed by a Settlement Capacity Audit.

Further, the extensive zoning of more peripheral sites will facilitate dispersed and, potentially, lower density development, located at a greater distance from retail and community services and from employment and inconsistent with County Development Plan Objective SO 12 to promote the consolidation of development and encourage sustainable travel patterns by reducing the need to travel, particularly by private transport. This objective is consistent with the National Sustainable Mobility Policy (2022) and the Climate Action Plan 2024 actions designed to significantly reduce vehicular kilometres travelled per annum to achieve the statutory targets for greenhouse gas emissions under the Climate Action and Low Carbon Development Act 2015, as amended (the Climate Act).

The Environmental Report prepared in respect of the Strategic Environmental Assessment of the Local Area Plan also considers that Material Alterations MA 30, MA 31, MA 33, MA 35 and MA 36 are not consistent with the core strategy in the County Development Plan, do not align with national or regional requirements relating to compact growth, would contribute to peripheral growth, and represent an inefficient use of land as well as the additional costs in terms of servicing same in terms of water supply and wastewater treatment. Potential loss of local habitats and increase in soil sealing as well as potential reliance upon private transport, and cumulative adverse impacts are identified. In respect of MA 31 and MA 34, the Environmental Report considers that these are small areas but may affect core strategy targets as well as not reflecting sequential development approach.

In relation to the individual material alterations, the Office also notes the following:

**MA 29** (c.3.1ha) in Gorteen and **MA 31** (c.0.9ha) on Station Road both rezone land from Enterprise and Employment in the draft Local Area Plan to New Residential. Both sites are located in Enterprise and Employment landbanks at strategic locations on road and rail network on the western side of the town.

MA 29 is situated outside the CSO boundary<sup>4</sup> and MA 31 would constitute an isolated residential site surrounded by employment uses to the east, west and south, and agricultural zoned lands to the north. These material alterations are not consistent with the development of the town in a compact and sequential manner.

The CE's Report material alterations stage agrees with the Office's recommendation in respect of MA 29 and MA 30, stating:

*MA 29 – It is located approximately 1 km from the edge of the town centre, is not contiguous to the existing built-up area of the town and would require an extension of 100-150 meters to facilitate connections to both water supply and wastewater sewer. Furthermore, the Strategic Flood Risk Assessment indicates that the site adjoins a watercourse and is vulnerable to flood risk in the medium and high climate change scenarios.*

*MA 31- It is considered that residential development at this peripheral location would not promote compact growth or sustainable travel options, by reason of its non-sequential out of town location. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

In relation to MA 29 and MA 31, the Northern and Western Regional Assembly (NWRA) submission recommends that the Local Area Plan is not made with these material alterations and that the lands remain zoned as Enterprise and Employment to provide adequate zoned lands for these uses to allow Ballina to continue to function as the key economic driver in the north-west of the county as set out in the RSES. However, as no policy basis for this recommendation has been provided, the

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<sup>4</sup> As per Endnote 17 of the National Planning Framework (Appendix 4 References).

Office does not consider that this rationale supports a Direction on that particular basis.

**MA 30** (c.7.8ha) and **MA 36** (6ha) in Laghtadawannagh both rezone land from Agriculture in the draft Local Area Plan to New Residential. MA 30 also rezones a small area (0.1 ha) from Existing Residential to New Residential.

MA 30 is partially located outside the CSO Settlement boundary and MA 36, which adjoins to the land to the south, is almost entirely outside the CSO Settlement boundary. Both sites leapfrog more suitable lands closer to the centre of the settlement zoned for residential development or as Strategic Reserve, and are inconsistent with the development of the town in a sequential manner outwards from the core area.

Both MA 30 and MA 36 also overlap with flood risk areas, this matter is addressed further below.

The Office also notes that neither site has been the subject of a Settlement Capacity Assessment. Uisce Éireann's submission to the Material Alterations (16<sup>th</sup> July 2024) states that together MA 30 and MA 36 comprise a very large site which may necessitate strategic upgrades and that third party permissions may be required to service the sites via the adjacent estates.

The CE's Report material alterations stage agrees with the Office's recommendation in respect of MA 30 and MA 36, stating:

*MA 30 – It is considered that residential development at this peripheral location would not promote compact growth or sustainable travel options, by reason of its non-sequential out of town location and the site overlaps with Flood Risk Zones A/B. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

*MA 36 - It is considered that residential development at this peripheral location would not promote compact growth or sustainable travel options, by reason of its non-sequential out of town location and the site overlaps with Flood Risk Zones A/B. Furthermore, the rezoning of these lands for residential development would*

*be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

The NWRA submission to the Material Alterations (16<sup>th</sup> July 2024) also recommends that MA 30 and MA 36 are not made as they would fail to contribute towards the principle of compact urban growth for Ballina, and to strengthen compliance with RPO 3.1 and RPO 7.20 of the RSES.

The National Transport Authority's (NTA) submission similarly expresses concern with the proposed zoning of land for residential development under MA 30 and MA 36 given the peripheral location of these lands and the scale of development that could be accommodated at these large-scale sites. It is stated that the use of these significant lands for residential development during the plan period would not be aligned with a compact and sequential approach to development and could perpetuate a sprawl pattern of growth in Ballina.

**MA 33** (c.0.7ha) and **MA 34** (c.0.1ha) rezoned land from Recreation and Amenity (MA 33) and Agriculture (MA 34) in the draft Local Area Plan to New Residential at Garrankeel. These sites, both of which are located outside the CSO Settlement boundary at almost 2.2 km walking distance to the town centre, are highly isolated, non-sequential, and are not consistent with sustainable travel patterns.

Neither site has been the subject of a Settlement Capacity Assessment. However, the CE's Report material alterations stage notes that additional information was received by Uisce Éireann after their initial submission confirming both MA 33 and MA 34 are serviced by wastewater connections<sup>5</sup>.

The CE's Report material alterations stage agrees with the Office's recommendation in respect of MA 33 and MA 34, stating:

*MA 33 - It is considered that residential development at this peripheral location which is located outside the CSO boundary at almost 2.2km walking distance from the town centre is highly isolated, non-sequential and is not consistent with sustainable travel patterns. Furthermore, the rezoning of these*

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<sup>5</sup> The Uisce Éireann submission to the Material Alterations had referenced that available GIS indicated that these sites are not serviced by Uisce Éireann in respect to wastewater.

*lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

*MA 34 – It is considered that residential development at this peripheral location which is located outside the CSO boundary at almost 2.2km walking distance from the town centre is highly isolated, non-sequential and is not consistent with sustainable travel patterns. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

The NWRA submission to the Material Alterations (16<sup>th</sup> July 2024) also recommends that MA 33 and MA 34 are not included in the adopted Local Area Plan for the same reasons as set out under MA 30 and MA 36 above.

In relation to MA 33 and MA 34, the NTA submission to the Material Alterations also considers that the failure to adequately pursue and implement policy objectives in the County Development Plan to promote a compact and sequential approach to development would undermine the effectiveness of measures set out in the Ballina Local Transport Plan (LTP), embed a reliance on the private vehicle for trip-making in this area and hinder the achievement of LTP modal share targets. The NTA recommends that MA 33 and MA 34 are not incorporated into the Local Area Plan.

**MA 35** (c.15ha) rezoned land from primarily Agriculture with a very small area zoned Recreation and Amenity in the draft Local Area Plan, to New Residential at Abbeyquarter. This site would represent half of the New Residential land requirement for Ballina in the core strategy. The site is almost fully outside the CSO Settlement boundary and is inconsistent with the regional and county policies and objectives for compact and sequential growth and sustainable travel patterns.

MA 35 also overlaps with flood risk areas, this matter is addressed further below.

The Office also notes that the site has not been the subject of a Settlement Capacity Assessment, however the Uisce Éireann submission to the Material Alterations states that this is a very large site and if fully developed is likely to necessitate strategic upgrades, including pumping station upgrades.

The CE's Report material alterations stage agrees with the Office's recommendation in respect of MA 35, stating:

*MA 35 - It is considered that residential development at this peripheral location which is located almost fully outside the CSO boundary, non-sequential and is not consistent with sustainable travel patterns. UÉ also state the very large site would likely necessitate strategic upgrade including pumping station upgrade. The site is also with[in] the constraints study area for the Ballina Eastern Bypass and overlaps Flood Zones A/B. Furthermore, the rezoning of these lands for residential development would be contrary to the Core Strategy as set out in the Mayo County Development Plan 2022-2028.*

The NWRA submission to the Material Alterations also recommends that MA 35 is not included in the adopted Local Area Plan for the same reasons as set out under MA 30 and MA 36 above.

In light of the above, the Office considers that material alterations MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36 are inconsistent with the core strategy of the County Development Plan and with objectives CSO 4, CSO 5, SSO 3, SSO 6, GSO 1 and SO 12 to require sustainable, compact and sequential growth in Ballina by consolidating the built-up footprints and developing outwards from the centre in a sequential manner, to avoid the inappropriate extension of services and utilities, and to encourage sustainable travel patterns; and/or with RPO 3.1 and RPO 3.2(c) for compact growth and RPO 7.20 to increase the population living within settlements.

No or no adequate reasons consistent with proper planning and sustainable development have been provided to explain why the Planning Authority has decided to retain MA 29, MA 30, MA 31, MA 33, MA 34, MA 35 and MA 36, when they are inconsistent with the core strategy of the County Development Plan and with objectives CSO 4, CSO 5, SSO 3, SSO 6, GSO 1 and SO 12 of the County Development Plan and/or RPO 3.1, RPO 3.2(c) and RPO 7.20 of the RSES.

In relation to flood risk management as referenced above, the Office of Public Works' submission to the Material Alterations (10<sup>th</sup> July 2024) identifies that MA 30 and MA 36 at Kilmoremoy, and MA 35 at Abbeyhalfquarter, zone land which overlaps with Flood Zones A and B as highly vulnerable New Residential.

The Flood Guidelines 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.

Under the Flood Guidelines, highly vulnerable development is not appropriate in Flood Zone A or B unless it can be clearly demonstrated on a solid evidence base that the zoning or designation for development will satisfy all criteria of the plan making justification test (Justification Test).

According to the Flood Guidelines, land should not be zoned to accommodate less vulnerable uses within Flood Zone A and B unless all criteria of the Justification Test have been passed.

Objective INP 14 of the County Development Plan states:

*To have regard to the Guidelines for Planning Authorities on the Planning System and Flood Risk Management (DoEHLG/OPW 2009) and Circular PL2/2014 (or as updated), in the preparation of plans and strategies related to development and in the assessment of projects.*

RPO 3.10 of the RSES further states:

*Ensure flood risk management informs development by avoiding inappropriate development in areas at risk of flooding.... 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).*

The updated Strategic Flood Risk Assessment (SFRA) (section 8.3 Kilmoremy) states that ‘...since the area is not within or adjacent to the core town centre the Justification Test cannot pass’.

Section 8.10 Abbeyhalfquarter of the updated SFRA, states that:

*On the basis that the site is undeveloped and not within or adjacent to the core, the Justification Test cannot be applied or passed for the New Residential zoning located on the periphery of the settlement and within Flood Zone A/B.*

The Office considers therefore that the zoning of land at risk of flooding without passing the Justification Test under MA 30, MA 35 and MA 36 is inconsistent with objective RPO 3.10 of the RSES, to avoid inappropriate development in areas at risk of flooding and to implement the recommendations of the Flood Guidelines, and do not so implement the recommendations of the Flood Guidelines as required by RPO 3.10 and/or are inconsistent with Objective INP 14 of the County Development Plan to have regard to the Flood Guidelines in the preparation of plans.

No or no adequate reasons have been provided to explain why the Planning Authority has decided to retain MA 30, MA 35 and MA 36 when they are inconsistent with RPO 3.10 of the RSES and/or INP 14 of the County Development Plan.

The Office notes that the Transport Infrastructure Ireland submission to the Material Alterations (12<sup>th</sup> July 2024) states that MA 35 and MA 29 are within the N26 Ballina Bypass Phase 1 scheme Constraint Study Area (MA 35), and the Constraint Study Area of the longer term Planning Authority objective to progress a scheme to the east of Ballina (MA 29). However, neither site is located in the immediate vicinity of the proposed Ballina Bypass (as indicated on the Land Using Zoning Map of the adopted Local Area Plan), and it is understood that the potential routes for further bypass roads projects are not at the stage that would support a Direction on that particular basis.

## **2. Opinion of the Office and Reasons**

Having considered the Local Area Plan as adopted, under section 31AO(6) of the Act, the Office is of the opinion that the said Local Area 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 31AO(5) notice letter adequately justifies the failure to implement those recommendations or explain how, notwithstanding that failure, the Local Area Plan as made is consistent with the objectives of the County Development Plan.



As you will be aware, the Office has various functions in respect of evaluating and assessing local area plans, summarised as follows:

- under section 31AO(1) of the Act, the Office has a statutory duty to evaluate and assess at least at a strategic level Planning Authority proposals to make, amend or revoke local area plans;
- under section 31AO(2) the Office shall endeavour to ensure that where appropriate it addresses the legislative and policy matters set out at (a) to (e) therein;
- under section 31AO(3)(a), in making observations or submissions in respect of any local area plan evaluation or assessment, the Office shall make, to the relevant Planning Authority, such recommendations in relation to the Office's evaluation and assessments as it considers necessary 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;
- under section 31AO(6), the Office shall consider whether or not the local area plan as made, amended or revoked by the Planning Authority is, in the opinion of the Office, consistent with any recommendations made by the Office;
- 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; and
- 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 Local Area Plan in light of the above statutory functions and the section 31AO(5) notice letter, the Office is of the opinion that the Local Area Plan has not been made in a manner consistent with the recommendations of the Office. In particular:

- I. The Local Area Plan includes material alterations to the draft Local Area Plan, to zone additional residential land significantly in excess of what is required for the town having regard to the growth targets for Ballina under the core strategy of the County Development Plan. These material alterations are located in peripheral and non-sequential locations, and/or outside the CSO Settlement boundary, and/or without adequate infrastructure, and do not support sustainable travel patterns.

These material alterations would therefore encourage a pattern of development in particular locations which is inconsistent with the objectives of the County Development Plan to promote compact and sequential development by consolidating the built-up footprints and developing outwards from the centre in a sequential manner, to avoid the inappropriate extension of services and utilities, and to encourage sustainable travel

patterns under Objectives CSO 4, CSO 5, SSO 3, SSO 6, GSO 1 and SO 12 of the County Development Plan and RPO 3.1 and RPO 3.2 (c) for compact growth and RPO 7.20 to increase the population living within settlements.

- II. The Local Area Plan includes material alterations to zone land as New Residential located in Flood Zone A and B where the Flood Guidelines considers that such highly vulnerable uses are not appropriate unless a Justification Test is passed. The material alterations are therefore inconsistent with RPO 3.10 of the RSES to avoid inappropriate development in areas at risk of flooding and to implement the recommendations of the Flood Guidelines, and do not implement the recommendations of the Flood Guidelines as required by RPO 3.10 and/or are inconsistent with Objective INP 14 of the County Development Plan to have regard to the Flood Guidelines in the preparation of plans and the Planning Authority has failed to give any or any adequate reasons as to why the Flood Guidelines have not been implemented.

No or no adequate reasons relating to the proper planning and sustainable development of the area have been provided to explain why the Planning Authority has decided to retain the material alterations which are inconsistent with the core strategy and objectives of the County Development Plan and objectives of the RSES. In making the Local Area Plan with the material alterations and not implementing MA Recommendation 1 of the Office's submission to the Material Alterations, the Planning Authority has made the Local Area Plan contrary to the requirements of section 19(2) of the Act which requires local area plans be consistent with the objectives of the County Development Plan, its core strategy and any RSES that applies to the area of the plan.

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

- (i) Objectives CSO 4, CSO 5, SSO 3, SSO 6, GSO 1, SO 12 and INP 14 of the County Development Plan which state:

**CSO 4**

*To move towards more compact towns by promoting the development of infill and brownfield/consolidation/regeneration sites and the redevelopment of*

*underutilised land within and close to the existing built-up footprint of existing settlements in preference to edge of centre locations.*

### **CSO 5**

*To deliver at least 30% of all new homes in urban areas within the existing built-up footprint of settlements.*

### **SSO 3**

*To require sustainable, compact, sequential growth and urban regeneration in Ballina, Castlebar and Westport by consolidating the built-up footprints of these towns through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised, vacant and derelict lands for residential development and mixed use to facilitate population growth.*

### **SSO 6**

*To strengthen the core of settlements and encourage the compact growth of settlements by way of the development of infill sites, brownfield lands, underutilised land / buildings, vacant sites, and derelict sites within the existing built-up footprint of the settlements and develop outwards from the centre in a sequential manner.*

### **GSO 1**

*To ensure appropriate development occurs in a sequential manner outward from the core area, to maximise the utility of existing and future infrastructure provision, to promote sustainability and active travel, to make more efficient use of underutilised lands, and to avoid the inappropriate extension of services and utilities.*

### **SO 12**

*Integrate land use planning and sustainable transportation planning, promote the consolidation of development, encourage sustainable travel patterns by reducing the need to travel particularly by private transport, while prioritising walking, cycling and public transport.*

## **INP 14**

*To have regard to the Guidelines for Planning Authorities on the Planning System and Flood Risk Management (DoEHLG/OPW 2009) and Circular PL2/2014 (or as updated), in the preparation of plans and strategies related to development and in the assessment of projects;*

- (ii) Regional Policy Objectives RPO 3.1, 3.2(c), RPO 7.20 and RPO 3.10 which state:

### **RPO 3.1**

*Develop urban places of regional-scale through:*

- *Delivering on the population targets for the Metropolitan and Regional Growth Centres through compact growth;*
- *Delivering significant compact growth in Key Towns; and*
- *Developing derelict and underutilised sites, with an initial focus within town cores.*

### **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 7.20**

*Increase population living within settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, in-fill development schemes, area or site-based regeneration, service site provision and increased building heights appropriate to the settlement, together with infrastructure provision.*

### **RPO 3.10**

*To have regard to the Guidelines for Planning Authorities on the Planning System and Flood Risk Management (DoEHLG/OPW 2009) and Circular PL2/2014 (or as updated), in the preparation of plans and strategies related to development and in the assessment of projects;*

- (iii) The Flood Guidelines which *‘require the planning system at national, regional and local levels to:*

*Avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere;*

*Adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk;*

- (iv) The CE’s Report draft stage, the CE’s Report material alterations stage, and the section 31AO(5) notice letter;
- (v) Matters generally within the scope of section 19 of the Act;
- (vi) The Office’s statutory obligations under the Act; and
- (vii) Section 15 of the Climate Act.

In light of the above, the Office is, therefore, of the opinion that the Local Area Plan has not been made in a manner consistent with its recommendations as set out in the submission dated 16<sup>th</sup> July 2024, and that the decision of the Planning Authority results in the making of a Local Area Plan in a manner that is inconsistent with the County Development Plan of the area concerned, and as a consequence the use by the Minister of his or her functions to issue a direction under section 31 would be merited.

### 3. Recommendation to the Minister

Having regard to section 31AO(7) 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 in a manner that, in the opinion of the Office, will ensure that the local area plan sets out an overall strategy for proper planning and sustainable development as set out in the draft direction to the Planning Authority accompanying this notice letter, i.e.

Delete the following material alterations from the adopted Local Area Plan such that the subject lands revert to the zonings as indicated in the draft Local Area Plan:

- (i) Material Alteration MA 29 – i.e. the subject lands revert to Enterprise and Employment from New Residential;
- (ii) Material Alteration MA 30 – i.e. the subject lands revert to Agriculture and Existing Residential from New Residential;
- (iii) Material Alteration MA 31 – i.e. the subject lands revert to Enterprise and Employment from New Residential;
- (iv) Material Alteration MA 33 – i.e. the subject lands revert to Recreation and Amenity from New Residential;
- (v) Material Alteration MA 34 – i.e. the subject lands revert to Agriculture from New Residential;
- (vi) Material Alteration MA 35 – i.e. the subject lands revert to Agriculture and Recreation and Amenity from New Residential; and
- (vii) Material Alteration MA 36 – i.e. the subject lands revert to Agriculture from New Residential.

and apply all necessary consequential updates to the text of the plan consistent with the foregoing.

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](mailto:plans@opr.ie).

Yours sincerely,

A handwritten signature in black ink that reads "Niall Cussen". The signature is written in a cursive style with a light grey background behind it.

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**Niall Cussen**

Planning Regulator

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