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21 December 2018

Dear Sir/ Madam,

**Re: Fermanagh Omagh Local Development Plan 2030 – Draft Plan Strategy October 2018**

DAERA welcomes the opportunity to comment on the Fermanagh and Omagh Local Development Plan 2030 – Draft Plan Strategy

DAERA has considered the consultation document and our opinions are set out below. DAERA wish their representation to be heard by **Oral Hearing**.

The Natural Environment Policies NE01, NE02 and NE03 are **Unsound** in respect of Soundness Test: C3

**Why is it unsound?**

**Consistency tests**

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

Draft Policies NE01 – Nature Conservation, NE02 – Protected Species and their Habitats and NE03 - Biodiversity do not take adequate account of Natural Heritage policy as laid out in SPPS and PPS2. In their present form, these policies weaken the protection given under SPPS and PPS2.

**Draft Policy NE01 – Nature Conservation (a)** undermines the legal process which must be followed when considering development proposals which may have an impact on European designated sites. It misinterprets and misrepresents the three tests of the Habitats Directive and the Conservation (Natural Habitats, etc.) Regulations (NI) 1995 as laid out in the legislation and repeated in PPS2 Policy NH 1 by deviating from the



language used in the legislation and creating weaker policy tests. This legal process is adequately summarised in sections 6.177 and 6.178 of the SPSS.

NE01 (a) (i) is presented as an exceptional circumstance policy test, however, it renders the rest of the policy tests redundant and the overall policy unworkable. The draft plan policy statement (as written) implies that if any adverse effects can be avoided through mitigation there is, by default, no adverse effect on the integrity of the site and the other policy tests are not required. According to the Conservation (Natural Habitats, etc.) Regulations (NI) 1995, the consideration of mitigation measures should be part of the appropriate assessment when considering adverse effects on integrity.

NE01 (a) (iii) does not correctly reflect the 'imperative reasons of overriding public interest' (IROPI) test which is contained within the Habitats Directive and Regulations and which has been clarified by case law. In addition under the legislation the provision of appropriate compensatory measures is a separate and independent test and should not be included as an add-on to the IROPI test.

**Changes considered necessary to make sound: full & succinct information, evidence and supporting information**

Transpose the wording of the three tests in PPS2 Policy NH1 for exceptional circumstances exactly:

- There are no alternative solutions; and
- The proposed development is required for imperative reasons of overriding public interest; and
- Compensatory measures are agreed and fully secured. (through conditions or a planning agreement – 'legal certainty' as required by ECJ case law.)

or

Refer back to the legislation as in SPSS 6.178: "A development proposal which could adversely affect the integrity of a European or Ramsar site may only be permitted in exceptional circumstances as laid down in the relevant statutory provisions. (Directives 2009/147/EC and 92/43/EEC known as the Birds Directive and the Habitats Directive.)

**Draft Policy NE01 – Nature Conservation (b)**

The term 'qualities' (NE01(b), third line, seventh word) deviates from the language used in the legislation protecting ASSI's. This leaves an uncertainty about this test.

Furthermore, where a development is permitted, Policy NE01(b) makes no provision for appropriate mitigation or compensatory measures as in SPSS 6.184 or PPS2 NH3. This cannot be assumed and needs to be written into the policy.

**Changes considered necessary to make sound: full & succinct information, evidence and supporting information**



Use the word 'features' rather than 'qualities'.

Insert a clause at the end of paragraph (b), e.g. SPPS 6.184, "In such cases, appropriate mitigation and/or compensatory measures will be required."

### **Draft Policy NE01 – Nature Conservation (c)**

Section (c) omits the 'balancing clause' (which is contained in SPPS 6.190 and PPS2 NH4 – "where the benefits of the proposed development outweigh the value of the site". Additionally there is no provision to secure appropriate mitigation or compensation measures as is required under the SPPS and PPS2 NH4 – "In such cases, appropriate mitigation and/or compensatory measures shall be required".

### **Changes considered necessary to make sound: full & succinct information, evidence and supporting information**

Insert the wording of SPPS 6.190

or

Insert the wording used in PPS2: "A development proposal which could have a significant adverse impact on a site of local importance may only be permitted where the benefits of the proposed development outweigh the value of the site".

It would also benefit the text if a link to the NIEA Mapviewer was inserted at 5.41  
<https://apps.dera-ni.gov.uk/nedmapviewer/>

### **Draft Policy NE02 – Protected Species and their Habitats**

The policy reads: "The Council will not permit development proposals which are likely to harm a protected species and their habitats unless there are no alternative solutions and the proposal is to meet an overriding public interest and/or mitigation and/or compensatory measures are provided". The inclusion of the first "or" in the policy disregards the first two tests in the policy; "no alternative solutions" and "overriding public interest". In addition, the clause from the Habitats Regulations and existing policy in respect of the maintenance of favourable conservation status of the population is missing.

There are two types of 'protected species'; EU and nationally 'protected' species and they each have different levels of protection. This is not reflected in the Draft Plan Policy NE02.

### **Changes considered necessary to make sound: full & succinct information, evidence and supporting information**



Remove the first "or" from the third line of policy and insert a clause in respect of the maintenance of favourable conservation status.

"The Council will not permit development proposals which are likely to harm a European protected species and their habitats unless there are no alternative solutions and the proposal is to meet an overriding public interest and there is no detriment to the maintenance of the population of the species at a favourable conservation status and mitigation and/or compensatory measures are provided".

For nationally protected species the language used in the existing SPPS 6.181 should be followed.

### **Draft policy NE03 – Biodiversity**

This policy references the Council's Local Biodiversity Action Plan (LBAP) in the policy box. There is a concern that the LBAP may not list all the priority species or habitats within the Council area, nor allow for newly arrived 'priority species' or newly recognised 'priority habitats'. In this respect, the policy may limit protection of priority species and habitats which the Council have a legal duty, under the Wildlife and Natural Environment Act (NI) 2011, to have regard to.

#### **Changes considered necessary to make sound: full & succinct information, evidence and supporting information**

Replace the words "identified by the Council's Local Biodiversity Action Plan (LBAP)" with the wording from policy NH5 in PPS2 which lists all the habitats, species or features of natural heritage importance which are protected under the policy.

### **Draft policy L01 – Development within the Sperrin Area of Outstanding Natural Beauty**

The Natural Environment Policy L01 is **Unsound** in respect of Soundness Test: C3

#### **Why is it unsound?**

##### **Consistency tests**

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

Draft policy L01 'policy box' does not refer to the 'special character' of the area as in PPS2 policy NH6 and SPPS 6.187



There is some concern about the wording of the policy which states that “favourable consideration will be given to pathways and informal recreation facilities”. Difficulties may arise in the future with regard to what constitutes informal recreation, the cumulative effects of development and the capacity of this highly sensitive landscape to accommodate further development.

SPPS Clause 6.188 refers to the requirement to take account of Landscape Character Assessments in assessing proposals. This is missing from the draft policy L01.

**Changes considered necessary to make sound: full & succinct information, evidence and supporting information**

It is suggested that the policy needs strengthened and the wording “erode the distinctiveness” is expanded to “erode the distinctive landscape character, visual amenity, natural, historic or cultural heritage of the Sperrin AONB, its views and setting...”

Proposals for recreation facilities will be subject to the same constraints as other development in the Sperrin AONB.

A requirement for a landscape and visual assessment (LVIA) to be undertaken for any development proposal, including pathways and informal recreation facilities, should be included in the policy clarification. The policy for AoHSV, a lesser designation in the landscape hierarchy, has this requirement on page 150.

Insert the following clause in the policy box: “In assessing proposals, including cumulative impacts in such Sperrin Area of Outstanding Natural Beauty, account will also be taken of the Landscape Character Assessments and any other relevant guidance including AONB Management Plans and local design guides”.

It is suggested the policy needs strengthened and the wording “erode the distinctiveness” is expanded to “erode the distinctive landscape character, visual amenity, natural, historic or cultural heritage of the Sperrin AONB, its views and setting...”

**Draft policy RE01 – Renewable and Low Carbon Energy Generation**

Policy RE01 is **Unsound** in respect of Soundness Test: C3

**Why is it unsound?**

Consistency tests

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

The identification of areas with highest and limited underlying capacity is contrary to 'natural heritage' policies contained in PPS2 and SPPS to protect designated international and national sites and European protected and national priority species and habitats.

The 'Wind Energy Strategy' map identifies a number of 'Areas with Highest Underlying Capacity' for wind energy development. There is a concern that three of these areas with highest underlying capacity include Slieve Beagh (no.3), The Lough Navar and Ballintempo Uplands (no.6) and Lough Bradan (no.1).

The Slieve Beagh area, number 3, largely co-incides with the European site Slieve Beagh Special Protection Area designated for Hen Harriers. These Annex 1 birds are particularly vulnerable to collision with turbine blades. Whilst it is noted in Appendix 7, Wind Energy Strategy for Fermanagh and Omagh District Council, that the "SPA designation may significantly constrain the capacity of the area in terms of locations where wind turbines would be acceptable", the identification of this area number 3 does focus the attention for wind development and may be in breach of the Habitats Directive and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

The Lough Navar and Ballintempo Uplands, (area no.6), indicated on the Wind Energy Strategy covers a number of Areas of Special Scientific Interest and also contains areas of priority grassland, peatland and occurrences of Marsh Fritillary butterflies, a European protected species.

Lough Bradan (area no.1) also contains some areas of peatland and grassland priority habitats as well as records of Marsh Fritillary.

In addition areas such as Croagh and Garvary River which are shown as 'Areas with Limited Underlying Capacity' coincide largely with the Pettigo Plateau Special Protection Area, a designated European site.

The Wind Energy Strategy map does not take into account European or nationally designated heritage sites, nor areas rich for European protected and national priority species and habitats.

**Changes considered necessary to make sound: full & succinct information, evidence and supporting information**

Amend the Wind Energy Strategy map to show natural heritage sites and features where there is no underlying capacity.



## Additional Comments

### **Natural Environment Policies NE01-03**

There is no mention in any of the Natural Environment policies of 'features of earth science conservation importance'. These are an important component of the Natural Heritage suite of features worthy of conservation.

NE01 does not mention consideration of the value of nationally designated sites to the habitat network as in SPPS 6.183.

NE03 – It would be desirable to see a mention of the Biodiversity duty under the WANE Act and the importance of considering the protection and enhancement of biodiversity outside of protected species and habitats.

DAERA supports and welcomes **draft policy MIN01** in respect of the stance taken that Commercial peat extraction will not be permitted under this policy.

### **Agricultural and Forestry Development Policy IB06**

The wording in draft policy IB06 Agricultural and Forestry Development suggests that only **intensive farming** or **animal husbandry** proposals need to demonstrate that they will not result in any significant adverse environmental effects. However, other agricultural proposals can have significant adverse environmental effects eg development proposals for the storage of animal manures and slurries. The wording in the policy should therefore be broadened to encompass the range of agricultural development proposals which can result in a significant adverse impact on the environment. Suggested wording is "*Agricultural development proposals must demonstrate....*"

The Policy Clarification for IB06 should include an explanation about the issues surrounding livestock installations and ammonia, as well as clarification on permitted development rights for agricultural buildings. Ammonia (NH<sub>3</sub>) is a gas emitted into the air as a result of many farming activities such as the housing of livestock, the storage and spreading of animal manures and slurries and the use of chemical fertiliser. Air pollution related to ammonia, and the associated nitrogen deposition, is known to have a damaging impact on sensitive habitats, wider biodiversity and ecosystem resilience, as well as human health. Agriculture is the dominant source of ammonia emissions, currently making up 94% of Northern Ireland's current emission levels. The majority of Northern Ireland's designated sites are exceeding their critical levels, the concentration at which environmental damage occurs.



Permitted Development (PD) rights for an agricultural building under 500m<sup>2</sup> can only be conferred if there is no significant effect on the environment. The relevant articles from the legislation pertaining to Natura 2000 sites is detailed as follows: The Planning (General Permitted Development) Order (Northern Ireland) 2015 Permitted Development 3.—(1) Subject to the provisions of this Order and regulations 55 and 56 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995, planning permission is hereby granted for the classes of development described as permitted development in the Schedule.

### **Regulation Unit**

The full extent of potentially contaminated sites in the Fermanagh and Omagh District Council area is not fully known. Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997 (WCLO) sets out the legal provisions for the introduction of a Contaminated Land regime in Northern Ireland. The Order was introduced in 1997 but Part III has not yet been commenced. Should Part III of the WCLO be commenced then this may result in increased responsibilities for Fermanagh and Omagh District Council, increased responsibilities which do not appear to have been fully reflected in this draft Fermanagh and Omagh Plan Strategy. The absence of Part III of the WCLO and, specifically, an inspection strategy for land contamination places a limitation on the application of contaminated land directly into the LDP process; however Fermanagh and Omagh District Council should be made aware of their potential future responsibilities when preparing their LDP. Even in absence of Part III Fermanagh and Omagh can still have a position statement and/or policy within their LDP in relation to land contamination and how this will aim to protect human health receptors.

- The Draft Plan Strategy does not appear to have any strategic policies and/or topic based policies in relation to contaminated land.
- Contaminated land should have its own reference within the glossary as it is technically different to brownfield land.
- It should be noted that new or extended waste management facilities are not only subject to planning permission being granted but also to the determination and approval of the appropriate waste management authorisation from NIEA.
- Page 211- "Waste management facilities include landfill sites, incinerators, civic amenity sites and recycling plants". It should be noted that there are other waste management facilities i.e. anaerobic digestion, transfer stations, scrap yards, end of life vehicle facilities, combustion plants.





## **Landscape**

DAERA is pleased to see that a review and update of the Landscape Character Assessment for the Fermanagh & Omagh Council area has been carried out by a Consultant experienced in this area of work and that "the assessment corresponds with the established principles of landscape character assessment that have evolved" since the publication of the NILCA Series in 1999, namely the "Landscape Character Assessment Guidance for England and Scotland pub. 2002 (Scottish Natural Heritage/Countryside Agency) and "An Approach to Landscape Character Assessment" pub. 2014 (Natural England) (ref: para 2.3).

This has been used as a evidence base for the separate "Landscape Designation Review for Fermanagh and Omagh". It is noted that the consideration of the terminology to be used for "local landscape areas" as recommended by the Scottish Guidance and the terminology used in the SPPS and past Area Plans i.e. Areas of High Scenic Value (ref: para 3.5) and support the decision to use the latter which will ensure consistency of approach across the different Council areas, one of the soundness tests.

It is noted that the Landscape Wind Energy Capacity Study is dated January 2018 and appears to have proceeded the Landscape Character Assessment Review dated September 2018.

### **Draft Policy LO2 - Special Countryside Areas (ref: page 149).**

DAERA supports the designation of Special Countryside Areas. DAERA notes that the 'Islands CPA' as identified in the Fermanagh Area Plan 2007 has been carried through and identified as a SCA (page 2, PPS21) but notes that it is unclear how the further SCAs were decided.

It is suggested that the wording "landscape character" and "visual amenity" is used throughout, including in the 2nd bullet point – "...does not threaten the landscape character, visual amenity..." and the 4th bullet point – "...whilst being sympathetic to the landscape character, visual amenity...";

There is a concern that the wording "consolidation of development" in the 2nd bullet point is open to interpretation and could lead to difficulties;

It is suggested that a requirement for a landscape and visual assessment (LVIA) for any development proposal is included in the policy clarification as is required for larger scale development proposals in AoHSVs.



**Local Landscape Policy Areas Draft Policy HE07 (ref: page 139).**

DAERA supports the inclusion of a draft policy on Local Landscape Character Areas (LLPAs) but suggest that the wording "intrinsic landscape character, visual amenity and environmental and historic value" should read "intrinsic landscape character, visual amenity and features of natural, built and cultural heritage value, their views and settings".

It is noted "that in most cases the existing use of the LLPA should be retained" (ref: para 5.26). The existing LLPAs in the Plan area were designated a considerable time ago and many of the environmental, historic and culture assets in/adjoining settlements were never designated as LLPAs. We suggest there is an undertaking in the policy clarification to resurvey existing LLPAs and designate new.

DAERA notes in the policy clarification the proposal that "detailed development guidance for individual LLPAs will be included in the Local Policies Plan" (ref: para 5.26).

DAERA supports that the LLPA policy "will apply in addition to and without prejudice to" other statutory provision or development plan policy (ref. para 5.27).

The LLPA policy clarification suggests that LLPAs can "assist in creating "buffers" between different land uses" (ref: para 5.25). While sometimes this is the case, the correct designations to be used to protect buffers and ensure coalescence does not occur are the use of Urban and Rural Landscape Wedges.

DAERA suggests that Urban/Rural Landscape Wedges, as used by Belfast City Council who have included a policy on landscape wedges in its draft strategic, could be considered in the Fermanagh & Omagh draft strategic plan in the interests of consistency across all the Councils.

## **Marine and Fisheries Division**

### **Marine Conservation and Reporting Team**

Marine Conservation and Reporting Team have reviewed the LDP Draft Plan Strategy, LDP Sustainability Appraisal Report and Habitats Regulation Assessment. The boundary of this Council area is approximately 83km from Northern Irish marine waters. We therefore consider that any potential impacts to protected habitats and species in the marine environment of Northern Ireland would be negligible. We have no further comment to make.



### Marine Plan Team

The Marine Plan team welcomes the opportunity to comment on the Sustainability Appraisal accompanying the Fermanagh and Omagh Local Development Plan 2030. We welcome that the marine aspect and the hydrological linkages from Fermanagh and Omagh district to the marine area have been acknowledged in Appendix 2 (Key Characteristics and Baseline Information) and Appendix 3 (Plans, Policies, Programmes and Strategies).

It is advised that the potential impacts on and linkages to transitional and coastal waters, good ecological status and good environmental status need to be included and considered within Section 13 on Water and in Objective 10 – to improve water quality.

It is noted that Appendix C also includes legislation. Consequently, marine legislation such as the MANI, MCAA, the EU Directive 2014/89/EU establishing a framework for maritime spatial planning and the Marine Strategy Framework Directive should be included.

It is also suggested that the implications for the LDP with respect to the UK MPS and the draft Marine Plan for Northern Ireland are amended to align with the legal requirements set out in Section 8 and Section 58 of MANI and the MCAA.

In relation to the objective/requirements of the draft Marine Plan the text should be amended to *"The Marine Plan for Northern Ireland will inform and guide the regulation, management, use and protection of the Northern Ireland marine area. The Plan contains policies that reflect, clarify and signpost current legislation, policy measures and practices from the UK MPS and across NI and UK Government Departments and Agencies. Its policies will be used by public authorities in taking decisions which affect or might affect the marine area. The draft Marine Plan was published for consultation in April 2018."*

Given Fermanagh and Omagh district does not directly adjoin the marine area but is linked hydrologically, we are content that the references to the UK MPS, draft Marine Plan and MSFD and MSP Directive are allocated to the SA/SEA Topic - Water.

These comments should be read alongside those on the Draft Plan Strategy.

### **Advice for District Councils (terrestrial planning authorities):**

For authorisation or enforcement decisions (development management):



When taking any 'authorisation or enforcement' decision relating to any act which affects or might affect the whole or any part of the marine area, Section 58 of the Marine and Coastal Access Act 2009 (MCAA) and Section 8 of the Marine Act (Northern Ireland) 2013, require that a public authority must make such decisions in accordance with the appropriate marine policy documents; unless relevant considerations indicate otherwise.

For District Councils, this means that, currently, in taking a planning permission decision or making a decision in relation to a condition or enforcement, you, as the Public Authority, are legislatively required to ensure that that you do so, **in accordance with** the UK Marine Policy Statement (UK MPS). The UK MPS is a material consideration and is of equivalent standing with terrestrial planning policy documents, such as, the Regional Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).

Once the Marine Plan for Northern Ireland is published in final form, you will also have to ensure that such decisions are taken in accordance with the Marine Plan (in addition to the UK MPS).

If you do not make a planning decision in accordance with the UK MPS and the Marine Plan (when adopted) the legislation further requires you, as the Public Authority, to state your reasons for not doing so.

It is important to note, that this applies to **any** decision relating to **any** act, **which affects or might affect** the whole or any part of the marine area, so will include for example, applications for planning permission that are not located near the coast, but which might impact on the marine area.

For other decisions (Local Development Plan preparation):

When taking any decision which relates to any function capable of affecting (or which might affect) the marine area, which is not an authorisation or enforcement decision, Section 58 of the Marine and Coastal Access Act 2009 (MCAA) and Section 8 of the Marine Act (Northern Ireland) 2013, require a public authority to have regard to the appropriate marine policy documents.

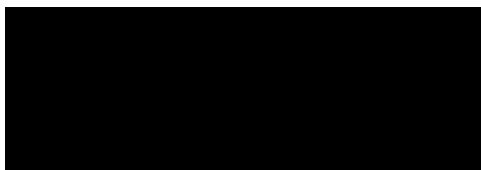
For District Councils, this means that currently, in the preparation of your Local Development Plan and all of its associated documents, you, as the Public Authority, are legislatively required to **have regard** to the UK Marine Policy Statement (UK MPS).

Once it is published in final form, you will also have to have regard to the Marine Plan for Northern Ireland (in addition to the UK MPS). Careful attention must be paid to both



the UK MPS and the Marine Plan for Northern Ireland, as these marine policy documents are of equivalent standing with terrestrial planning documents, such as, the Regional Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).

Yours sincerely,



Georgina Thurgate  
Senior Scientific Officer  
Natural Environment Division  
Northern Ireland Environment Agency  
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21 December 2018

Dear Sir/Madam,

**Re: Fermanagh and Omagh Draft Plan Strategy Habitats Regulations Assessment and Sustainability Appraisal (incorporating Strategic Environmental Assessment).**

The Department of Agriculture, Environment and Rural Affairs (DAERA) has considered the consultation and associated documents and our opinions are set out below:

**1. Sustainability Appraisal**

**1.1 General Comments**

In general some of the information in the document is out of date and should be updated.

There are references to DARD throughout the document - DARD as a Department no longer exists and any reference should be changed to DAERA.

**1.2 Natural Heritage**

The baseline should be updated on p91 as there are now 124 ASSIs within the council area. The additional 4 ASSIs are Aghanaglack, Gortnasool Glebe and Meenadoan, Owenreagh River and Belmore Mountain.

**Appendix 4 Discussion Tables and Matrices of assessing policies against the SA objectives**

- **Strategic allocation and management of housing supply; Housing in settlements.** The impact of these policies on brownfield land which contains Open Mosaic Habitat; a Priority Habitat Type which hosts a wide variety of rare plants and invertebrates should be acknowledged in the SA and mitigated against.



- **Housing in countryside.** The impact of promoting housing in the countryside on water quality and air pollution should be acknowledged in the SA and mitigated against. Also the potential impact on bat roosts through redevelopment of formal sites for dwellings should be mitigated against.
- **Open Space, sport and outdoor recreation.** The fact that draft Policy OSR04 does not protect the natural heritage against the cumulative impact on of existing and/or proposed plans or projects should be acknowledged in the SA and mitigated against.
- **Industry and Business.** The fact that policy IB06 as currently worded does not appear to apply to all agricultural development proposals and the fact that the impact of ammonia emissions is not highlighted should be acknowledged in the SA and mitigated against.
- **Tourism.** The draft policies TOU2-TOU04 do not provide protection for natural heritage. This should be acknowledged in the SA and mitigated against.
- **Natural Heritage.** DAERA does not agree with the significant positive scoring for Biodiversity for these policies because they do not comply with nature conservation legislation, caselaw or policy set down in PPS2 (see DAERA response on the Draft Plan Strategy). This should be acknowledged in the SA and mitigation put in place.
- **Historic Environment.** Although policy clarification for draft Policy HE06 mentions the botanical interest of the site, it does not fully recognise the biodiversity importance of veteran trees and the rare and threatened mammals (bats), invertebrates, fungi and lichens which are associated with them. This should be acknowledged in the SA and mitigation put in place.
- **Landscape.** DAERA does not agree with the significant positive scoring for landscape & townscape for Policy L01 because it does not provide sufficient protection for the AONB (see DAERA response on the draft Plan Strategy). This should be acknowledged in the SA and mitigation put in place.
- **Flood Risk Management.** Draft Policies FLD 01 on development and FLD05 on culverting do not protect for impacts on the natural heritage. This should be acknowledged in the SA and mitigation put in place.





- **Renewable Energy.** While the wording of Policy RE01 provides protection for biodiversity and nature conservation interests, the accompanying Wind Energy Strategy map does not include nature conservation designations and biodiversity. It also highlights an area with the Highest Underlying Capacity for wind energy in an area designated as an SPA for Hen Harrier, with other designated sites and biodiversity lying within areas with Limited Underlying Capacity. The policy and the map are contradictory and this should be acknowledged in the SA and mitigation put in place.
- **Public Utilities.** The potential impact of PU02 Electricity lines on bird flight lines should be acknowledged in the SA and mitigation put in place.
- **Waste management facilities.** The potential impact of draft policy WM01 of siting waste management facilities on quarries which have biodiversity interest should be acknowledged in the SA and mitigation put in place.

### 1.3 Regulation Unit

This is a high level document with no detailed information on waste management activities such as specific sites, specific waste treatment technologies, specific waste streams, etc. Therefore it is difficult to make comments from the perspective of waste regulation which tends to focus on these issues at a more specific/detailed level.

'Waste/Materials' has been identified as one of the SA topics under Environmental which seems appropriate.

The Decision Making Criteria for the Waste/Materials topic seem appropriate.

Appendix 2 Baseline information, Section 12 Waste. The overview provided is a bit out of date. Tullyvar landfill has closed in 2018 and Drummee landfill (not mentioned) is still operating. No new facilities to deal with mixed MSW have been developed within the Council area and waste is exported to other Council areas for treatment and recovery. The description is very focused on household waste and there is no mention of commercial/industrial waste or construction/demolition waste.

'Land Quality and Soil' has been identified as one of the SA topics under Environmental which seems appropriate.

'Key Characteristics and baseline information' this section does not appear to cover contaminated land / brownfield land within the area and perhaps would be good to capture this.



#### **1.4 Air and Environmental Quality Team**

As of today there are 19 AQMA's in Northern Ireland

For up-to-date regional data please see the 2017 Progress Report for Fermanagh and Omagh council or the 2018 Updated Screening Report for Fermanagh and Omagh council once it is published.

Please also see the 2016 Air Pollution in Northern Ireland Report or any subsequent publications.

#### **1.5 Water Management Unit**

The indicators used within the SA/SEA and Plan Strategy should be extended to include indicators for 'Water Quality', specifically in relation to the number of waterbodies within the LDP area at 'Good' status under the Water Framework directive.

#### **1.6 Marine and Fisheries Division response**

##### **Marine Conservation and Reporting Team**

Marine Conservation and Reporting Team have reviewed the LDP Draft Plan Strategy, LDP Sustainability Appraisal Report and Habitats Regulation Assessment. The boundary of this Council area is approximately 83km from Northern Irish marine waters.

We therefore consider that any potential impacts to protected habitats and species in the marine environment of Northern Ireland would be negligible. We have no further comment to make.

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It is advised that the potential impacts on and linkages to transitional and coastal waters, good ecological status and good environmental status need to be included and considered within Section 13 on Water and in Objective 10 – to improve water quality.



It is noted that Appendix C also includes legislation. Consequently, marine legislation such as the MANI, MCAA, the EU Directive 2014/89/EU establishing a framework for maritime spatial planning and the Marine Strategy Framework Directive should be included.

It is also suggested that the implications for the LDP with respect to the UK MPS and the draft Marine Plan for Northern Ireland are amended to align with the legal requirements set out in Section 8 and Section 58 of MANI and the MCAA.

In relation to the objective/requirements of the draft Marine Plan the text should be amended to *"The Marine Plan for Northern Ireland will inform and guide the regulation, management, use and protection of the Northern Ireland marine area. The Plan contains policies that reflect, clarify and signpost current legislation, policy measures and practices from the UK MPS and across NI and UK Government Departments and Agencies. Its policies will be used by public authorities in taking decisions which affect or might affect the marine area. The draft Marine Plan was published for consultation in April 2018."*

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For District Councils, this means that, currently, in taking a planning permission decision or making a decision in relation to a condition or enforcement, you, as the Public Authority, are legislatively required to ensure that that you do so, **in accordance with** the UK Marine Policy Statement (UK MPS). The UK MPS is a material consideration and is of equivalent standing with terrestrial planning policy documents, such as, the Regional Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).



Once the Marine Plan for Northern Ireland is published in final form, you will also have to ensure that such decisions are taken in accordance with the Marine Plan (in addition to the UK MPS).

If you do not make a planning decision in accordance with the UK MPS and the Marine Plan (when adopted) the legislation further requires you, as the Public Authority, to state your reasons for not doing so.

It is important to note, that this applies to **any** decision relating to **any** act, **which affects or might affect** the whole or any part of the marine area, so will include for example, applications for planning permission that are not located near the coast, but which might impact on the marine area.

For other decisions (Local Development Plan preparation):

When taking any decision which relates to any function capable of affecting (or which might affect) the marine area, which is not an authorisation or enforcement decision, Section 58 of the Marine and Coastal Access Act 2009 (MCAA) and Section 8 of the Marine Act (Northern Ireland) 2013, require a public authority to have regard to the appropriate marine policy documents.

For District Councils, this means that currently, in the preparation of your Local Development Plan and all of its associated documents, you, as the Public Authority, are legislatively required to **have regard** to the UK Marine Policy Statement (UK MPS).

Once it is published in final form, you will also have to have regard to the Marine Plan for Northern Ireland (in addition to the UK MPS). Careful attention must be paid to both the UK MPS and the Marine Plan for Northern Ireland, as these marine policy documents are of equivalent standing with terrestrial planning documents, such as, the Regional Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).

## **2. Habitats Regulations Assessment**

### **2.1 Considerations of in-combination and cumulative effects p14**

DAERA notes that consideration is given to other Local Development Plans which are currently in preparation by neighbouring councils in Northern Ireland and the Republic of Ireland and that these may need be reviewed when the HRA is reviewed. However, the HRA does not state whether any other types of projects or plans have been identified that may, in combination with the Draft Plan Strategy, give rise to adverse effects on Natura 2000 sites. This must be addressed by the HRA.

## 2.2 Fermanagh and Omagh Wind Energy Strategy

DAERA has concerns about the Fermanagh and Omagh Wind Energy Strategy in Appendix 7 of the draft plan strategy in terms of how it will impact on SACs, SPAs and Ramsar sites. The strategy and accompanying map has assessed the landscape capacity for wind energy, but does not adequately take into consideration the impact on international sites. The strategy states that it is the “*principal material consideration for all wind energy development*” and that it gives “*a broad indication of where potential appropriate wind energy development could take place*”.

In the Landscape Wind Capacity study (on which the Fermanagh and Omagh Wind Energy Strategy is based), it states for the Slieve Beagh LCA that “*The landscape scale is sufficient for larger wind energy developments and there is some residual capacity. However, the SPA is a potentially significant non-landscape constraint.*” Despite this, the Wind Energy Strategy map still shows the Slieve Beagh LCA as having Highest Underlying Capacity despite the presence of Slieve Beagh – Mullaghfad - Lisnaskea SPA. In addition, there are many other SPAs, SACs, Ramsar sites and associated swan fields which are within Areas with Limited Underlying Capacity on the Wind Energy Strategy map, but which have not been mentioned in the LCA assessments in the Landscape Wind Capacity study. The Fermanagh and Omagh Wind Energy Strategy has therefore not taken into consideration international sites, despite the fact that it will have a significant impact on them. This must be fully reflected in the HRA.

## 2.3 Natural Heritage policy

DAERA disagrees with the statement on p29 of the HRA that the Natural Environment policy is protective. This is because it undermines the legal process which must be followed when considering development proposals which may have an impact on European designated sites. It misinterprets and misrepresents the three tests of the Habitats Directive and the Conservation (Natural Habitats, etc.) Regulations (NI) 1995 by deviating from the language used in the legislation and creating weaker policy tests.

In addition, it does not correctly reflect the ‘imperative reasons of overriding public interest’ (IROPI) test which is contained within the Habitats Directive and Regulations and which has been clarified by case law. In addition under the legislation the provision of appropriate compensatory measures is a separate and independent test and should not be included as an add-on to the IROPI test.



## 2.4 Recommendations p60-64

DAERA notes the recommendations, however it does not agree with the conclusions of the HRA that *"the draft plan policies that may have an adverse effect on site integrity are too general to assess"*. DAERA considers that it is still necessary to go to Stage 2 Appropriate Assessment, as some of the policies can be assessed at this stage and mitigation measures can be put in place. This issue must be addressed by the HRA.

Please contact the [seateam@daera-ni.gov.uk](mailto:seateam@daera-ni.gov.uk) should you have any queries or require clarification.

Yours sincerely,

  
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