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19th May 2020

Re: Mid Ulster District Council Draft Habitats Regulations Assessment Report and Sustainability Appraisal Incorporating Strategic Environmental Assessment Report of the Local Development Plan 2030 – Draft Plan Strategy February 2019

Dear Dr Boomer

DAERA welcome the opportunity to comment on the MUDC Draft Plan Strategy and accompanying Habitats Regulations Assessment Report and Sustainability Appraisal Incorporating Strategic Environmental Assessment Report of the February 2019.

Draft Habitats Regulations Assessment Report of Local Development Plan 2030 – Draft Plan Strategy, February 2019, Mid Ulster District Council

DAERA appreciates the effort made to proof the Plan against likely significant effects on designated European sites. Where specific plan zoning has covered or adjoins designated European sites, DAERA believes that these must be clearly addressed to avoid adverse effect and does not consider that 'cross-reference' to Plan Policy NH 1 alone is adequate to make these individual policies sound. There must not be any presumption for development within a designated European site. Correspondingly, DAERA makes the following comments to improve the Draft Plan Strategy February 2019.

In terms of the Conclusions of the HRA, pages 111 – 112, DAERA would request that the Recommendations outlined above are incorporated into the Draft Plan Strategy to make it compliant with the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

Draft Policy NH 1 – INTERNATIONAL DESIGNATIONS

DAERA, fully supports draft Policy NH 1

Draft POLICY MIN 2 – EXTRACTION AND PROCESSING OF HARD ROCK AND AGGREGATES (ACMD)

ACMDs cover a 'northern' part of the Slieve Beagh Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site, Teal Bog SAC and Owenkillew River SAC. Whilst restrictive in terms of mineral extraction, the POLICY MIN 2 does allow for minor expansion of an existing mineral working. The policy states that a precautionary approach will be adopted and the onus will be on the developer to demonstrate that development will not "prejudice essential characteristics of a site of international nature conservation importance" including SACs and SPAs.

Where an application for a mineral working extension, or other planning application is within a designated European site, such as a SPA, SAC, Ramsar or SCI, the onus is on the competent authority, in this case, the Mid Ulster District Council, to carry out a Habitats Regulations Assessment. This should be clarified within the POLICY MIN 2.

Recommendation

The Policy Justification & Amplification should clarify that Policy MIN 2 (a) relates to the corresponding Plan Policy tests for each equivalent site type, namely; NH 1 International, NH 3 National, NH 4 Local and NH 2 and NH 5 in respect of Protected Species and other Natural Heritage Interests.

Draft POLICY TOU 1 – PROTECTION OF TOURISM ASSETS AND TOURIST ACCOMODATION

The Draft Policy states that exceptions to development in TCZs will include "minor improvements to infrastructure such as walking and cycle-ways, fishing and canoe stands; or the proposal includes the provision of tourism accommodation or facilities through the re-use of existing vernacular buildings".

A TCZ abuts and partially overlies Owenkillew River SAC. The TCZ zoning of part of the Special Area of Conservation and directly up to the site's edge has the potential to result in likely significant effects on the features of the European site.

Recommendation

The Policy Justification and Amplification should clarify that heritage interests referred to in the Policy Box include designated European sites.



Draft POLICY TOU 4 – OTHER TOURISM FACILITIES/ AMENITIES AND ATTRACTIONS

Draft POLICY TOU 4 introduces Tourism Opportunity Zones (TOZ). Four TOZs are designated along the shores of Lough Neagh at Traad Point, The Battery, Mountjoy and Washing Bay. Each of these four TOZs overlap, in part, a portion of Lough Neagh & Lough Beg SPA. A TOZ is also designated at Davagh Forest across a part of the Owenkillew River SAC. The conscious zoning of TOZs, including areas of the designated European site, create a presumption in favour of development at these sites and POLICY TOU 4 states that proposals for “outdoor tourism facilities, amenities or attractions, such as golf courses, fishing lakes, outdoor activity centres and picnic sites, interpretation and visitor centres, will accord with the plan where they are located ... within a Tourism Opportunity Zone” and “Development within a TOZ will need to demonstrate that they will not have, or will have mitigated against, significant adverse impacts on internationally recognised sites”. The Council has not ascertained that Policy TOU 4 will not adversely affect the integrity of the site.

The Habitats Regulations Assessment Report February 2019 has not assessed the impact of the possible future developments arising from this policy on the Lough Neagh & Lough Beg SPA/ Ramsar site but has recommended (Table 5, page 109) that “Developments within the Loughshore and Davagh Forest TOZs must provide information to enable assessment of direct and indirect effects of any increase in recreation resulting from the development”.

DAERA is concerned that as parts of the European designated site itself have been zoned, that this has the potential for the loss of ‘Habitat extent’ and ‘Roost site locations’. For example, the TOZ at Washing Bay has zoned areas of reed-bed, which is the breeding habitat for selection feature Great Crested Grebe. Other areas within the zoned TOZs include wet woodland and scrub and have the potential to provide roost sites for various species among the Waterbird Assemblage resulting in fragmentation of habitat and the designated site. A proportion of the Waterbird Assemblage is currently in ‘Unfavourable’ condition and any further pressure that would result in the fragmentation of the habitats within the site will not assist in bringing the site into ‘Favourable’ condition. Whilst DAERA, does not oppose the principle of designating TOZs with the caveat of the requirement for a Habitats Regulations Assessment to be carried out for any development application, it opposes the inclusion of designated parts of the Lough Neagh & Lough Beg SPA and Owenkillew River SAC within the TOZ.

Recommendations

Amend the TOZ boundaries to exclude areas of designated European sites. Insert the word ‘proposed’ in front of the word ‘Developments’ and add on the integrity of the designated European site” on page 109, Table 5.2, 7. TOZs – Recreation, in the Habitats Regulations Assessment Report February 2019.



This should then be incorporated into the Plan Strategy Policy TOU 4 as follows: *“Proposed developments within the Loughshore and Davagh Forest TOZs must provide sufficient information to enable assessment of direct and indirect effects of any increase in recreation resulting from the development on the designated European site”*.

Draft POLICY RNW 1 – RENEWABLE ENERGY

Draft Policy RNW 1 states that: ‘Within Areas of Constraint on Wind Turbines and High Structures, proposals for a wind turbine with a hub height below 15m are required to comply with policy tests and criteria of Policy RNW 1’.

The Area of Constraint on Wind Turbines and High Structures (AOCWTHS) is **zoned over part of the northern section of the Slieve Beagh – Mullaghfad - Lisnaskea Special Protection Area/ Ramsar site**. The Slieve Beagh SPA is designated for its breeding population of Hen Harriers. Although development is constrained within an AOCWTHS, conscious zoning of an AOCWTHS, which includes part of the designated European site, sets a precedent and creates a presumption in favour of development (up to 15m hub height) at Slieve Beagh SPA/ Ramsar site. The Council has not ascertained that Policy RNW 1 will not adversely affect the integrity of the site.

Such renewable energy developments are identified in the site’s Conservation Objectives and represent a potential threat through loss of foraging habitat, disturbance to nest and roosting sites, risk of collision and providing access to previously remote areas.

DAERA is concerned that as parts of the European designated site itself have been zoned, that this has the potential for the loss of ‘Habitat extent’, ‘Habitat quality’ and the potential for direct collision with flying Hen Harriers. The Habitats Regulations Assessment Report February 2019 has not assessed the impact of possible future developments arising from this policy on the site selection feature. Any development with associated infrastructure would impact negatively on the integrity of the site and would not be acceptable to DAERA.

An AOCWTHS is also identified on Teal Lough SAC, an area of **active blanket bog**. Teal Lough is one of the largest and least disturbed upland blanket peat and raised bog habitats in Northern Ireland. Any development with associated infrastructure would impact negatively on the integrity of the site and would not be acceptable to DAERA.

An AOCWTHS is also identified over part of the Owenkillew River SAC, designated for Freshwater Pearl Mussel, Otter, Salmon, Old sessile Oakwoods and Bog Woodland. Any development associated infrastructure within, or close to, could impact negatively on the integrity of the site and would not be acceptable to DAERA.



Recommendations

With respect to Wind Energy development outside SCAs and AOCWTHSs "Designated Natural Heritage sites, Protected Species and Other Natural Heritage interests" should be listed in the Policy Box as requiring satisfaction of policy tests in NH1 – NH 6 inclusive.

The Policy on AOCWTHS refers to "policy tests" in the last sentence. Given the European sites covered by the AOCWTHS, the Justification & Amplification should highlight that one of the Policy Tests will be the Plan Policy NH 1.

Draft POLICY SCA 1 – SPECIAL COUNTRYSIDE AREAS

DAERA supports in principle the zoning of Special Countryside Areas. Special Countryside Areas (SCA) which are primarily identified on grounds of unique 'landscape' have been drawn to include parts of the Carn – Glenshane SAC, Lough Neagh & Lough Beg SPA/ Ramsar site, Slieve Beagh SAC and Slieve Beagh – Mullaghfad – Lisnaskea SPA/ Ramsar site.

The draft policy SCA 1 states that developments which would be acceptable within SCAs include: ancillary open development relating to appropriate recreation/ open space uses, which have been demonstrated to be in the wider public interest; or in-situ replacement of an existing building of a similar size and character, or communications apparatus to recognise a recognised 'not spot'. The draft Policy goes on to specify developments within Lough Neagh/ Lough Beg and Slieve Beagh SCAs and refers specifically cross references to Policy CT 2 in respect of the Lough Neagh/ Lough Beg SCA, however, the policy makes no mention of the need for a HRA within the designated European sites prior to any planning approval.

Recommendation

Within the Justification & Amplification, it should be clearly stated that there is a requirement for Plan Policy NH 1 to be applied prior to any development approval likely to have a significant effect within a designated European site where it is overlain by a SCA zone.

Draft POLICY OS 2 – PROTECTION OF RIVER CORRIDORS

DAERA supports POLICY OS 2 in principle. Draft Policy OS 2 states that "Proposals on sites adjacent to a main river will conflict with the plan unless it has been demonstrated that all the following criteria are met:

- a) a biodiversity strip of at least 10 metres from the edge of the river is provided and accompanied with an appropriate landscaping management proposal;
- b) public access and recreation provision is provided where appropriate;
- c) there is no unacceptable adverse impact on nature conservation;



- d) the proposal will not compromise or impact on the natural flooding regime of the main river and complies with the requirements Flood Risk Policy; and
- e) any development would not prejudice an existing or future opportunity to provide a riverside walk.

DAERA accepts that the application of Policy OS 1 has the potential to provide a degree of protection for internationally designated river sites. The policy 'Justification' goes on to state that the Policy applies to both the Owenkillew and Ballinderry Rivers, both of which are designated Special Areas of Conservation. DAERA would point out that any proposal likely to have a significant effect would require a HRA to be carried out by the competent authority and this should be clearly flagged up.

Recommendations

Include the following clarification within the Justification & Amplification:

"Planning permission will only be granted for a development proposal that, either individually or in combination with existing and/ or proposed plans or projects, is not likely to have a significant effect on the Owenkillew River SAC and the Upper Ballinderry River SAC".

Clarification is also required in respect of the definition of a "main river" and whether this includes the tributaries of the Owenkillew and Ballinderry Rivers.

Draft POLICY CT 4 – DISPERSED RURAL COMMUNITIES

DAERA notes that the boundary of the Dispersed Rural Community (DRC) zone directly abuts the part of the Owenkillew River SAC which is designated for Freshwater Pearl Mussel, Otter, Salmon, Old Sessile Oakwoods and Bog Woodland. On page 128 of the Habitats Regulations Assessment Report February 2019, it states "Dispersed Rural Communities currently exist therefore do not require to be assessed for HRA". The existing Cookstown Area Plan 2010 did not undergo a HRA. Water quality is of prime importance to the selection feature FPM and given the proximity to the designated European site, the Plan must flag up the requirement for a HRA.

Recommendation

Include the following clarification within the policy box: *"Planning permission will only be granted for a development proposal that, either individually or in combination with existing and/ or proposed plans or projects, is not likely to have a significant effect on the Owenkillew River SAC".*



Sustainability Appraisal Incorporating Strategic Environmental Assessment Report

General Comments

The Sustainability Appraisal is well laid out and contains Table 1.1 which signposts the requirements for the Environmental Report.

Given the wide range of topics under the remit of Local Development Plans, they have the potential to have a significant impact on the environment. Below is a list of suggested measures which could be used to monitor both the positive and the negative impacts of the Local Development Plan on the environment. NOTE: This is a generic list; some may not be relevant given the lack of coastline within the council boundary.

- Condition of natural heritage designated sites (both marine and terrestrial) within the LDP area (information provided from DAERA)
- Number and extent of developments approved and refused within or adjacent to designated sites (both marine and terrestrial)
- Number and extent of developments approved and refused in relation to priority habitats and species
- Number and extent of developments approved and refused in relation to protected habitats and species. (both marine and terrestrial)
- Number and extent of developments approved and refused on active peatland
- Number and extent of developments approved and refused on features of earth science importance
- Number and extent of developments approved and refused within ancient and long-established woodland
- Number and extent of developments approved and refused within AONBs, LLPAs, AoHSVs and SCAs
- Extent of blue-green infrastructure within the LDP area
- Number and extent of developments with “key site requirements” which include measures to protect and integrate species, habitats and natural heritage features (both marine and terrestrial)
- The percentage of waterbodies at High, Good, Moderate, Poor or Bad status, as defined by the Water Framework Directive, in the LDP area using the publication date of the LDP as the baseline (information provided from DAERA)
- Number and extent of developments approved and refused for culverting of watercourses and sea defences



- Condition of marine (transitional and coastal) surface waters identified under the Water Framework Directive within the LDP area (information provided from DAERA)
- Number and extent of developments approved and refused in the inter-tidal area
- Number and extent of developments approved and refused in the developed and undeveloped coast (Coastal development)
- Number and extent of developments approved and refused that considered marine policy documents (UK MPS / Marine Plan)
- Number and extent of developments approved and refused that considered land and sea interactions
- Number and extent of developments approved and refused that considered impacts on the marine area
- Number and extent of developments approved and refused that also require a marine licence or other marine consents.

With respect to Chapter 5.0 SA/SEA Appraisal of Preferred Options and Reasonable Alternatives and in reference to the following Policies: Dispersed Rural Communities page 152, Protection of River Corridors page 166, Protection of Tourism Assets and Tourist Accommodation page 210, Other Tourism Facilities/ Amenities And Attractions page 215, Lough Shore Tourism Opportunity Zones, page 220, Sperrins Tourism Opportunity Zones page 222, Areas of Constraint on Wind Turbines and High Structures page 287 and Renewable Energy page 290; the appraisal of SA/SEA 11: Conserve Biodiversity should be scored - - (double negative) unless the suggested recommendations identified in the DAERA comments on the Draft Habitats Regulations Assessment Report are adopted.

Peat Extraction, Policy MIN 4

The policy does not explain what is meant by the exception “where the peat land is not reasonably capable of restoration”. This weakens the policy test by being open to interpretation and this is exacerbated by the wording in the justification and amplification at 14.27 “Therefore commercial extraction will only be permitted from bogs where the peatland is not reasonably capable of restoration and therefore is no longer deemed active and which have little or no conservation/scientific interests”. This statement is again open to interpretation and could be taken as being permissive of commercial extraction on inactive peat. However, just because an area of peatland is inactive, does not mean that it is not capable of restoration, nor that it has little or no conservation/scientific interest. As a result DAERA does not agree with a positive score for SA/ SEA Conserve Biodiversity, page 266.



Area of Outstanding Natural Beauty

The section on Areas of Outstanding Natural Beauty, pages 265 – 266 assesses two options. Both options are scored identically and in section 5.565, 'Reasons for selecting the preferred option', Option (ii) is selected. However, no reason for the preferred Option (ii) is clearly articulated. The Draft Plan presents a complex cover of policies within the AONB, with eight different policy zones including: DRC, 'Sixtowns', SCA, AOCWTHS, TCZ, TOZ ACMD, ASAI and a significant portion that has no zone in which all other Plan policies would apply where relevant. The Policy test NH 6 is a lesser test for AONBs and therefore DAERA do not agree with a positive scoring for SA/ SEA 11 Conserve Biodiversity and SA/ SEA 12 Landscapes and Townscapes

Landscape Character Assessment Review

DAERA are concerned that the Landscape Character Assessment Review does not follow either the Landscape Institute or DAERA NIEA best practice guidelines as indicated in the recommended document 'An Approach to Landscape Character Assessment': Natural England: 2014.

Therefore DAERA do not agree with the scorings against the SA/SEA objective 12 "*To maintain and enhance the character and quality of landscapes and townscapes*" as there is a risk that without a robust evidence base, the landscape character and quality of Mid Ulster could be negatively impacted by some of the plan policies.

Climate change

Northern Ireland's climate is changing. Even if the most rigorous efforts are applied globally to limit the cause of global warming, we are locked in to certain level of climate change. We must therefore manage the risks and utilise any opportunities afforded from our changing climate so to adapt and build resilience.

The most recent scientific indications (UK Climate Projections published in 2018 by the MET office) have reaffirmed that we will face hotter, drier summers, warmer winters and more frequent extreme weather events.

The Northern Ireland Climate Change Adaptation Programme (NICCAP1) was published in January 2014. This contains the Northern Ireland Government's response to the risks and opportunities identified in the Climate Change Risk Assessment for Northern Ireland (published January 2012) as part of the overall UK Climate Change Risk Assessment. Updated UK Climate Change Risk Assessments are required to be published by the UK Parliament every 5 years under the UK Climate Change Act 2008. Each 5 year risk assessment takes on board the most up to date data on, and scientific understanding of, our changing climate. NICCAP1 provides the strategic objectives in relation to adaptation to climate change, the proposals and policies by which each department will meet these objectives, and the timescales associated with the proposals and policies identified in the period up to 2019.



A second Northern Ireland Climate Change Adaptation Programme (NICCAP2) is under development and when published, is expected to cover the period 2019-2024. NICCAP2 will address the climate change risks and opportunities identified for Northern Ireland in the most recent UK Climate Change Risk Assessment (CCRA2) which was published on 18 January 2017. Although primarily NICCAP2 will be Northern Ireland's Government response to CCRA2, a chapter which sits outside government will be included and will be dedicated to those adaptation actions carried out by civil society and local government sectors which will also contribute to addressing the findings of CCRA2.".

Local councils have worked with Climate NI to develop drafts of this chapter so you may wish to add something more specific in relation to your council.

Marine

It is advised that issues raised on the draft LDP also apply to the SA/SEA Report and these have not been reiterated below.

It is noted that marine policy documents and marine legislation are not acknowledged within the report. It is also noted that the report does not acknowledge the council area's connectivity with the marine area, through its river network and Lough Neagh and the potential impacts on important marine species. It is noted that the Sustainability Report refers to the North Atlantic Salmon Conservation Organisation in the list of relevant plans and programmes in Appendix 2.

As Mid Ulster is not a coastal area it is acknowledged that there will generally be a limited reference to marine aspects and the effects on the marine area within the appraisal. However, due to the connections highlighted above, it is disappointing that the Sustainability Objectives, particularly those in relation to water quality and biodiversity, or the appraisal itself, does not attempt to draw out potential effects on the marine area.

You are also advised that marine policy documents (the UK MPS or the Draft Marine Plan) should be considered as part of the justifications within the preferred policy/policy options or reasonable alternatives. This is particularly important given the connectivity with the marine area through watercourses and where Sustainability Objectives have a potential marine aspect. It appears that only terrestrial planning policy documents have been explicitly considered.

It is advised that the SA should give recognition to, and acknowledge, the hydrological pathways and consider any potential impacts on the marine area. For example, 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 Objective 9 on water. In addition, the potential impacts on and linkages to salmon need to be included and considered within



Objective 11 on biodiversity. As a result the appraisal of the General Principles and Natural Heritage sections of the Report will need reviewed.

You are further advised and for completeness of the SA that reference is made to marine legislation (Marine Act (Northern Ireland) 2013 and the Marine and Coastal Access Act 2009) and to the relevant marine policy documents (including the UK Marine Policy Statement and the draft Marine Plan for Northern Ireland) in the Report. These documents should be listed in Appendix 2.

<https://www.gov.uk/government/publications/uk-marine-policy-statement>

<https://www.daera-ni.gov.uk/sites/default/files/consultations/daera/Marine%20Plan%20for%20NI%20final%2016%2004%2018.PDF>

Air Quality

Reference the text taken from the SEA report:

Page 14: "To improve connectivity between and within settlements and their rural hinterland through accommodating investment in transportation to improve travel times, alleviate congestion and improve safety for both commercial and private vehicles as well as more sustainable modes of transport including buses, walking and cycling."

Page 61: "The effects of the plan on air quality are likely to be negative given the potential increased car and energy use in homes and work places. Although the plan can have a positive effect on the area by reducing greenhouse gas emissions through sustainable locations for development."

What measures will be taken to improve connectivity using "sustainable modes of transport" to counteract the "potential increased car and energy" anticipated from the developments proposed within the LDP. In addition are there any further proposals for park and ride facilities to help reduce the increased congestion in areas like Dungannon? Is there any plan to widen the air quality monitoring network to monitor and assist in measuring the effects of the proposed increase in congestion?

Please contact the SEA Team at seateam@daera-ni.gov.uk should you have any queries or require clarification.

Yours sincerely



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