

APPENDIX 6-1 RELEVANT LEGISLATION AND POLICY

6.1.1 Relevant Legislation

6.1.1.1 *Habitats and Birds Directive*

The Habitats Directive ensures the conservation of a wide range of rare, threatened or endemic animal and plant species. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora was adopted in 1992 and aims to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements. It forms the cornerstone of Europe's nature conservation policy with the Birds Directive and establishes the EU wide Natura 2000 ecological network of protected areas, safeguarded against potentially damaging developments.

The Natura 2000 network of protected areas is known as Special Areas of Conservation (SAC) and Special Protection Areas (SPA). In general terms, they are considered to be of exceptional importance in terms of rare, endangered or vulnerable habitats and species within the European Community. The requirements of the Habitats Directive have been transposed into Irish law through the European Communities (Birds and Natural Habitats) Regulations 2011 [S.I. No. 477/2011]. This legislation affords protection to both Special Protection Areas and Special Areas of Conservation.

Special Areas of Conservation (SAC) are designated under the Conservation of Natural Habitats and of Wild Fauna and Flora Directive 92/43/EEC (Habitats Directive) which is transposed into Irish law by the EC (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011). Special Protection Areas (SPA) are classified under the Birds Directive (2009/147/EC on the Conservation of Wild Birds). Article 6(3) of the Habitats Directive requires an 'appropriate assessment' to be undertaken for any plan or project that is likely to have a significant effect on the conservation objectives of a Natura 2000 site. An 'appropriate assessment' is an evaluation of the potential impacts of a plan or project on the integrity of a Natura 2000 site, and the incorporation, where necessary, of measures to mitigate or avoid negative effects.

6.1.1.2 *EU Water Framework Directive (2000/60/EC)*

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 Establishing a Framework for Community Action in the Field of Water Policy (European Parliament 2000) is known as the Water Framework Directive (WFD). The WFD established a framework for the protection of both surface and groundwaters. The WFD provides a vehicle for establishing a system to improve and / or maintain the quality of waterbodies across the European Union (EU). The Directive requires all waterbodies (river, lakes, groundwater, transitional, coastal) to attain 'Good Water Status' (qualitative and quantitative) by 2027.

The WFD was initially transposed into Irish law by S.I. No. 722/2003 – European Communities (Water Policy) Regulations 2003, as amended (hereafter referred to as the Water Policy Regulations). The Water Policy Regulations outline the water protection and water management measures required to maintain high status of waters where it exists, prevent any deterioration in existing water status and achieve at least 'Good' status for all waters. Subsequently, S.I. No. 272/2009 - European Communities Environmental Objectives (Surface Waters) Regulations 2009, as amended (hereafter referred to as the Surface Waters Regulations), and S.I. No. 9/2010 - European Communities Environmental Objectives (Groundwater) Regulations 2010, as amended (hereafter referred to as the Groundwater Regulations), were promulgated to regulate WFD characterisation, monitoring and status assessment programmes, in terms of assigning responsibilities for the monitoring of different

water categories, determining the quality elements and undertaking the characterisation and classification assessments.

There are a number of WFD objectives in respect of which the quality of water is protected.

- Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water;
- Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status by 2015;
- Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status by 2015. Where this is not possible and subject to the criteria set out in the Directive, aim to achieve good status by 2021 or 2027;
- Progressively reduce pollution from priority substances and cease or phase out emissions, discharges and losses of priority hazardous substances; and
- Prevent Deterioration in Status and prevent or limit input of pollutants to groundwater.

6.1.1.3 EIA Directive 2011/92/EU

The Environmental Impact Assessment Directive 85/337/EEC was adopted on 27th June 1985 on the assessment of the effects of certain public and private projects on the environment. The 1985 Directive was amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC, and the Directive and its amendments were codified in 2011 by Directive 2011/92/EU. The current Directive 2014/52/EU amends the 2011 codified Directive, but does not replace it. The objective of the Directive (Directive 2011/92/EU), as amended by Directive 2014/52/EU, is to ensure a high level of protection of the environment and human health, through the establishment of minimum requirements for environmental impact assessment (EIA), prior to development consent being given, of public and private developments that are likely to have significant effects on the environment.

The EIA must consist of:

- the preparation of an Environmental Impact Assessment Report (EIAR) by the developer;
- the carrying out of consultations;
- the examination by the competent authority of the EIAR, any supplementary information provided, where necessary, by the developer and relevant information received through consultations with the public, prescribed bodies and any affected Member States;
- the reasoned conclusion of the competent authority on the significant effects of the project on the environment; and
- the integration of the competent authority's reasoned conclusion into any development consent decision.

The environmental impact assessment must identify, describe and assess the direct and indirect significant effects of the project on specified environmental factors, which includes Biodiversity (replaced Flora and Fauna in 2011).

6.1.1.4 National Legislation

6.1.1.4.1 Wildlife Acts 1976 to 2021

The Wildlife Act, 1976, is the principal national legislation providing for the protection of wildlife and the control of some activities that may adversely affect wildlife. The Wildlife Act, 1976, came into operation on 1 June 1977. It was the only major legislation concerned with wildlife that was passed in the previous 45 years. It replaced the Game Preservation Act, 1930, and the Wild Birds (Protection) Act, 1930. The Wildlife Acts have been amended as follows:

- Wildlife Act 1976 (no. 39 of 1976)
- Wildlife (Amendment) Act 2000 (no. 38 of 2000)
- Wildlife (Amendment) Act 2010 (no. 19 of 2010)
- Wildlife (Amendment) Act 2012 (no. 29 of 2012)
- Heritage Act 2018 (no. 15 of 2018), Part 3
- Planning, Heritage and Broadcasting (Amendment) Act 2021 (no.11 of 2021)

The aims of the Wildlife Acts are to provide for the protection and conservation of wild fauna and flora, to conserve a representative sample of important ecosystems, to provide for the development and protection of game resources and to regulate their exploitation, and to provide the services necessary to accomplish such aims.

The Wildlife Acts (1976 to 2021) also provide the mechanisms to give statutory protection to Natural Heritage Areas (NHA). These are areas that are considered to be important for the habitats present or for the species of plants and animals supported by those habitats. Under the Wildlife Amendment Act 2000, NHAs are legally protected from damage from the date they were formally proposed for designation.

In addition, a list of proposed NHAs (pNHAs) was published in 1995 but to date these have not had their status confirmed. Prior to statutory designation, pNHAs are subject to limited protection under various agri-environment and forestry schemes and under local authority planning strategies such as County Development Plans.

6.1.1.4.2 Flora (Protection) Order 2022

The current list of plant species protected by Section 21 of the Wildlife Act, 1976 is set out in the Flora (Protection) Order, 2022, which supersedes orders made in 1980, 1987, 1999 and 2015. It is illegal to cut, uproot or damage the listed species in any way, or to offer them for sale. This prohibition extends to the taking or sale of seed. In addition, it is illegal to alter, damage or interfere in any way with their habitats. This protection applies wherever the plants are found and is not confined to sites designated for nature conservation.

6.1.2 Relevant Policy

6.1.2.1 Kilkenny City and County Council Development Plan 2021 - 2027

The general 'development management requirements' relating to biodiversity relevant to this report are extracted from Volume 1, Chapter 9 of the Kilkenny City and County Development Plan 2021 - 2027 and outlined below.

(a) Development Management Requirements:

- Ensure that an ecological impact assessment is carried out, by suitably qualified professional(s), for any proposed project likely to have a significant impact on rare and

threatened species including those species protected by law and their habitats. Ensure appropriate avoidance and mitigation measures are incorporated into development proposals as part of any ecological impact assessment.

(b) Development Management Requirements:

- To ensure that development proposals, where relevant, improve the ecological coherence of the Natura 2000 network and encourage the retention and management of landscape features that are of major importance for wild fauna and flora as per Article 10 of the Habitats Directive.
- To protect and where possible enhance wildlife habitats and landscape features which act as ecological corridors/networks and stepping stones, such as river corridors, hedgerows and road verges, and to minimise the loss of habitats and features of the wider countryside (such as ponds, wetlands, trees) which are not within designated sites.
- To ensure that appropriate mitigation and/or compensation measures to conserve biodiversity, landscape character and green infrastructure networks are required in developments where habitats are at risk or lost as part of a development.

(c) Development Management Requirement:

- Require all developments in the early pre-planning stage of the planning process to identify, protect and enhance ecological features and habitats, and making provision for local biodiversity (e.g. through protection of existing breeding sites, and provision of appropriate new infrastructure such as swift, bat and barn owl boxes, bat roost sites, green roofs, etc.) and provide links to the wider Green Infrastructure network as an essential part of the design process.

(d) The Council will promote the planting of native tree and shrub species, by committing to using native species (of local provenance wherever possible) in its landscaping work and on County Council property and maximise the opportunity to enhance biodiversity within the City & County during the life time of the plan. Development Management Requirements:

- To protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character of the county, and to ensure that proper provision is made for their protection and management, when undertaking, approving or authorising development.
- To ensure that when undertaking, approving or authorising development that sufficient information is provided to enable an assessment of impacts on woodlands, trees, and hedgerows.
- To have regard to, and seek the conservation of identified trees and woodlands from a) the National Survey of Ancient and Long-Established Woodlands, b) the Tree Register of Ireland (c) sites of significance identified in the Kilkenny Woodlands Survey 1997, (d) the National Survey of Native Woodlands, and (e) Survey of Mature Trees in Kilkenny City and Environs, in the assessment of planning applications
- To retain hedgerows, and other distinctive boundary treatment such as stone walls, when undertaking, authorising or approving development; where the loss of the existing boundary is unavoidable as part of development, to ensure that a new hedgerow is planted using native species, and species of local provenance to replace the existing hedgerow and/or that the wall is re-built using local stone and local vernacular design.
- To discourage the felling of mature trees to facilitate development and, where appropriate make use of Tree Preservation Orders to protect important trees and groups of trees which may be at risk or have an amenity, biodiversity or historic value.

- To require the planting of native broadleaved species, and species of local provenance, in new developments as appropriate.
- (e) The Council will protect, manage and enhance the wetlands of the County having regard to the 'County Kilkenny Preliminary Wetland Survey, 2020' and subsequent surveys published during the lifetime of this plan. The Council will also ensure that there is an appropriate level of assessment in relation to proposals which involve draining, reclaiming or infilling of wetland habitats.
- (f) The Council will protect peatlands from inappropriate development having regard to their amenity and biodiversity value and their visual sensitivity.
- (g) The Council will in as far as is practicable and affordable manage and restore semi-natural habitats and their native plants on Council land.
- (h) Development Management Requirements:
 - To require relevant development proposals to address the presence or absence of invasive alien species on proposed project sites and (if necessary) require applicants to prepare and submit an Invasive Species Management Plan where such a species exists to comply with the provisions of the European Communities (Birds and Natural Habitats) Regulations 2011-2015.
 - For proposals connected to surface water systems, risks associated with the spread of crayfish plague shall be considered and applicants should submit a crayfish plague management strategy where appropriate.
- (i) Development Management Requirement:

The Council will promote the use of native plants and seeds from indigenous seed sources in all landscape projects.