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Alison McCullagh
Chief Executive

Barry Fegan
Programme Officer
Planning Appeals Commission
Park House
87/91 Great Victoria Street
Belfast
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Dear Mr Fegan,

Re. Response to further written representation made by Mr Patrick Haughey in connection with the Independent Examination of the Fermanagh and Omagh Draft Plan Strategy (2030)

During the course of the independent examination into the Draft Plan Strategy, Mr Haughey sought permission from the Commissioner to make a further written representation. The request was made under the "Procedures for Independent Examination of Local Development Plans (December 2019)" which says, at paragraph 28, that participants may, with the permission of the Commissioner, provide additional written material addressing "an important material change in circumstances which has occurred since the plan was referred for independent examination". Permission to do so was given by the Commissioner in a letter dated 10 March 2022 which is available on the Planning Appeals Commission website ([ED012.A](#)). The written submission from Mr Haughey is dated 18 March 2022 and is also available on the Planning Appeals Commission website ([ED012.B](#)). The Council has been asked to comment on the information presented by Mr Haughey in his 18 March 2022 letter.

Briefly by way of background, much of the information contained in the further representation is simply not relevant to the task that the Commissioner is required to undertake. The task, set out in section 10(6) of the Planning Act (Northern Ireland) 2011, is only to determine if the plan is sound and meets relevant legal requirements. Many of the points raised by Mr Haughey in his letter stray beyond these matters. Additionally, very little of the information presented in his letter is actually "new" information; much of it is simply a repeat of arguments he already made during the oral hearing sessions, which the Council responded to in detail at the time. The Council would refer the Commissioner back to its answers in rebuttal on these points.

Nevertheless, for the sake of completeness, the key points made by Mr Haughey are addressed below.

General comments

Mr Haughey makes a number of assertions about the scale of mineral development that will be permitted in the district if the draft plan strategy is adopted, for example stating that the district will “become one enormous precious metals and mining region”. The Council does not intend to rebut each and every one of these assertions, however it wishes to put on record that it disagrees with them. The Council explained its position in detail during the hearing sessions. It considers that, in accordance with the SPPS, the draft plan strategy strikes an appropriate balance between the need for minerals development on the one hand, and the need to safeguard the environment on the other hand (paragraph 6.152 of the SPPS).

The assertion that the district will become a “nuclear storage dump” is simply incorrect, as is the assertion that the district will become a “nuclear power hub”. There is nothing in the draft plan strategy which supports those assertions.

Office for Environmental Protection

The Office for Environmental Protection is a new public body set up under the Environment Act 2021. Its functions in respect of Northern Ireland are set out in Schedule 3 of the Act. Following the approval of the Northern Ireland Assembly on 22 February 2022 of the draft Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022, Schedule 3 of the Act came into force in Northern Ireland from 28 February 2022. That means that from 28 February 2022, the Office for Environmental Protection has the functions and powers set out in Schedule 3 of the Act in Northern Ireland. Broadly speaking, those functions and powers can be broken down into two categories: (a) scrutiny and advisory powers (Schedule 3, Paragraphs (1) – (2)); and, (b) enforcement powers (Schedule 3, Paragraphs (4) – (17)).

There is nothing in the plan that is inconsistent with the powers and functions exercised by the new Office for Environmental Protection. The role that the Office for Environmental Protection will take in the determination of applications for planning permission and in the local development plan process will be a matter for it to decide moving forward, in accordance with the provisions of Schedule 3 of the Act. It is not given any specific role in the local development plan process.

The draft plan strategy does not prejudice the role or functions of the Office for Environmental Protection nor does the establishment of the Office for Environmental Protection impact on the soundness or legality of the draft plan strategy.

Geological Disposal Facility

Mr Haughey refers to the desire of the United Kingdom Government to develop a Geological Disposal Facility in the United Kingdom. Further information on this proposal (which is at a very early stage of gestation) is available online (<https://www.gov.uk/guidance/geological-disposal>). The following information from the United Kingdom Government may be of relevance to the Commissioner in seeking to understand the points made by Mr Haughey:

“What is a Geological Disposal Facility (GDF)?

Geological disposal involves isolating radioactive waste deep underground, inside a suitable rock volume to ensure that no harmful quantities of radioactivity ever reach the surface environment. A GDF will be a highly engineered structure consisting of multiple barriers that will provide protection over hundreds of thousands of years.

Has any region been selected for a GDF?

At this stage, no host site for a GDF has been identified and discussions are happening with communities around England and Wales. Working Groups and Community Partnerships have been formed in different areas of the country to start exploring whether a GDF is right for their area and whether their area is right for a GDF. This will be a consent-based, partnership approach, with Right of Withdrawal by the community right up to a Test of Public Support.

When will a GDF be built?

Construction will only start when a suitable site is identified, all the necessary consents and permits have been obtained and the host community has indicated its willingness to host the facility through a Test of Public Support. For planning purposes, we assume that a GDF could be available to receive the first waste in the 2040s. Filling a GDF with waste and then closing it, once full, will run into the next century.”

As there are no proposals to build a geological disposal facility in the Fermanagh and Omagh District, and no requirement in regional policy to set out planning policy governing geological disposal facilities, the draft plan strategy does not specifically address geological disposal facilities. A development plan document is not the place to set out the Council’s views on the siting of a geological disposal facility in the United Kingdom. The Council’s view on this issue clear elsewhere, for example through its membership of the Nuclear Free Local Authorities. The plan is not unsound by virtue of its silence on the merits of this particular project. This is not the forum for views on this particular project to be explored.

United Kingdom Internal Market Act 2020

Mr Haughey refers to the “UK Internal Markets Bill (2020)”, which is now the United Kingdom Internal Markets Act 2020. He refers in particular to comments made by the Minister for Infrastructure about those parts of the legislation which “create a mechanism for the UK government to spend money in areas relating to infrastructure that are clearly devolved to [...] Northern Ireland and without any required engagement with the devolved governments”. Although the quote refers to Section 46, it appears that, in fact, the relevant section is Section 50 (Section 46 deals with a different issue, relating to the Northern Ireland Protocol).

Under Section 50(1)(b), a Minister of the Crown is given the power to provide financial assistance to any person out of money provided by Parliament for, or in connection with, providing infrastructure at places in the United Kingdom. This is simply a power to provide money. It does not, for example, circumvent the need for relevant permissions and / or consents, including planning permission, to be in place for before development can take place. The provision of funds by Ministers of the Crown to the devolved administrations for infrastructure is not a matter for this process. It is not even a planning matter.

That is of no relevance at all here. It does not raise any soundness or legal compliance point.

Executive Committee (Functions) Act (Northern Ireland) 2020

Mr Haughey refers to the “Functions Bill (2020)”, by which it is presumed he is referring to the Executive Committee (Functions) Act (Northern Ireland) 2020. That Act was passed following the decision of the Court of Appeal (Northern Ireland) in *In the Matter of An Application by Colin Buick as Chairperson of No Arc 21 for Judicial Review* [2018] NICA 26. The Act clarifies, in the light of that judgment, those decisions which are required to be referred to the Executive Committee before a decision is made. It has the effect, through section 1(4) of that Act, of exempting most decisions made by the Minister for Infrastructure under the Planning Act (Northern Ireland) 2011 from the need for referral to the Executive Committee. Other amendments are also made. The explanatory notes provide further information (<https://www.legislation.gov.uk/nia/2020/4/notes/data.pdf>).

This Act has no relevance at all here. This Act does not raise any soundness or legal compliance point.

Climate Change (No. 2) Bill

Mr Haughey refers to two climate change bills which were making their way through the Northern Ireland Assembly earlier this year. The first, introduced by Clare Bailey MLA, did not progress beyond the Consideration Stage. The second, introduced by the Minister for Agriculture, Environment and Rural Affairs, was passed by the Northern Ireland Assembly on 8 March 2022 (although it does not appear to have been granted Royal Assent yet). More details of that Bill can be found online (<http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/climate-change-bill/>).

The Bill is a complex piece of legislation, a full overview of which is beyond the scope of this letter. The obligation that is perhaps of most relevance for present purposes is the obligation on the Department of Infrastructure to produce “sectoral plans for infrastructure” which explain how the sector will contribute to achieving the targets set out in section 1 (2050 emissions target), 3 (2040 emissions target), and 4 (2030 emissions target) (Section 16(1)). These plans must include “policies and proposals for planning and construction” (underlining added) (Section 16(2)). Clearly, in due course, the Department will have to produce such plans which will include policies and proposals relating to planning; but at present, no such plans are in place, and it is likely to be some time before any such plans are in place.

It would be inappropriate for the Council to delay the progression of its plan strategy until such plans are in place. The Council is under a statutory duty to prepare a plan strategy (Section 8(1) Planning Act (Northern Ireland)). If the Council was to wait until sectoral plans were in place, it would introduce undue delay into the process. It is of note that the Department has not suggested that Councils should wait until sectoral plans are in place before bringing forward their local plans. Clearly, a sound and legally compliant plan can be brought forward before then.

The Council will have an opportunity to review the implications of the Climate Change Bill (No. 2), along with any relevant sectoral plans, in due course under the plan review mechanism (Section 13(1) Planning Act (Northern Ireland) 2011 and Regulation 26(1) Planning (Local Development Plan) Regulations (Northern Ireland) 2015).

Finally, the Council repeats a point it made at several points during the independent examination: the Council is alive to the need to tackle climate change, and is taking active steps to do so. The draft plan strategy recognises the challenge, and includes policies designed to help tackle climate change, most notably SP 01 (Furthering Sustainable Development) (and see also Strategic Objective 14). The Council refers back to the full answer it gave on this point during the session on Topic 16, “Renewable Energy” (9 March 2022) in response to Question 10.

No soundness or legal compliance issue arises.

Ministry of Housing, Communities and Local Government

Mr Haughey refers to comments made by the Minister for Infrastructure about plans by the United Kingdom Government to open a new office for the then Ministry for Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities) in Belfast. The intention is for some civil servants from that Department to be based in new offices in Belfast, to assist with the delivery of investment programmes identified in the budget. Further information is available here (<https://www.bbc.co.uk/news/uk-northern-ireland-56358226>).

This is irrelevant to the development plan process. It is not a soundness issue. The Council does not wish to comment on the substance of this matter further, but notes that, contrary to what Mr Haughey says, there is no need for the draft plan strategy to set out the role that various bodies play in the making of decisions in the planning system, as this is set out clearly already in the Planning Act (Northern Ireland) 2011. The opening of a new office in Belfast for civil servants from the Department for Levelling Up, Housing and Communities does not change that.

Definition of valuable minerals

Mr Haughey repeats arguments that he previously made about the definition of “valuable minerals” during the public hearing sessions. The Council responded to these arguments in detail at the public hearing session dealing with Topic 14, “Minerals” (1 March 2022). The Commissioner is referred, in particular, to the answer given to Question 6, which addressed the definition of minerals under the Planning Act (Northern Ireland) 2011. Mr Haughey has not raised any new arguments on this point. “Valuable minerals” is a phrase that is explicitly used in the SPPS at paragraph 6.148. It clearly covers gold, silver etc. — the phrase is not limited to “salt” (see the discussion of “valuable minerals” in the DfE paper submitted by the Council during the independent examination [MA008](#) (at page 4)).

Review of Strategic Planning Policy on Renewable and Low Carbon Energy

This point was considered in detail during the public hearing sessions. The Council dealt with the point under Topic 16, “Renewable Energy” (9 March 2022). Ms Suzanne Bagnall (Department for Infrastructure (Planning)) provided further detail on the ongoing review during the public hearing session. Further information on the review can be found online (<https://www.infrastructure-ni.gov.uk/publications/review-strategic-planning-policy-renewable-and-low-carbon-energy>).

As is clear from the above, the announcement of the review post-dated the publication of the draft plan strategy. The review is still not complete. It is likely to take at least several more months, as the Department has indicated that it intends to issue a draft revised policy document for full public consultation at some point in 2022.

It would be inappropriate for the Council to delay the progression of its plan strategy until the end of this review. The Council is under a statutory duty to prepare a plan strategy (Section 8(1) Planning Act (Northern Ireland)). If the Council was to wait until the outcome of this review before it adopted its plan strategy, it would introduce undue delay into the process. It is of note that the Department has not said that the local plan process should be delayed until the outcome of this review. The draft plan strategy has taken due regard of extant regional policy.

The Council will have a chance to take into account the outcome of this review, if relevant, in due course under the plan review mechanism (Section 13(1) Planning Act (Northern Ireland) 2011 and Regulation 26(1) Planning (Local Development Plan) Regulations (Northern Ireland) 2015).

I trust that this is of assistance.

If, when drafting your report, you require any further assistance or clarification from the Council, then please do not hesitate to contact me.

Yours Sincerely



Kim McLaughlin
Director of Regeneration and Planning