

[REDACTED]

Re: COUNTY DEVELOPMENT PLAN
(Consultation as per draft Ministerial Direction)
Administrative Office,
Planning Department,
Wicklow County Council Buildings,
Wicklow Town, A67FW96

15th November 2022.

Dear Sir/Madam

The ministerial direction¹ should require that the area AA2 as per Bray Municipal District Local Area Plan 2018² should be de-zoned.

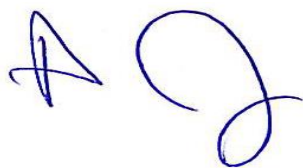
Reasons:

1. To protect the Knocksink Woods SAC³
2. The CEO of Wicklow CoCo and the local authority's senior Engineer both have concerns about any further development of zoned area AA2

I attach to this letter a document I have written explaining the reasons why.

Please acknowledge receipt. Thank you.

Yours sincerely,



Alex Pigot

[REDACTED]

CC: Minister Malcom Noonan, Minister for Heritage

¹ <https://www.wicklow.ie/Living/Services/Planning/Development-Plans-Strategies/National-Regional-County-Plans/Wicklow-County-Development-Plan-2022-2028/Stage-8>

² While the area to the southern side of Kilgarron Hill designated AA2 has been developed (Sika Woods) the northern side (bounded by a green line in the map), which is nearest to the Knocksink SAC is the subject of the three planning proposals in this submission to the consultation.
<https://www.wicklow.ie/Portals/0/adam/Documents/iKwwWWCVIEKQQTtoEwVz5GA/Link/Appendix%2011%20-%20Local%20Area%20Plans.pdf>

³ <https://eunis.eea.europa.eu/sites/IE0000725#tab-habitats>

Introduction

There are three proposals⁴ for development on area AA2, all submitted in 2022.

The proposals 22789 and 22794 to Wicklow County Council are included in the proposal for the SHD to An Board Pleanala. All three proposals have been approved. However, proposal 22789 and 22794 have been appealed to ABP and the SHD, it is expected, will be the subject of a Judicial Review in the coming days. **If all three appeals are successful, since the land is zoned residential it may become the subject of future appeals and that is why I am asking the minister to direct the local authority that the land zoned AA2 which is not yet developed be de-zoned.**

THE VARIOUS REASONS GIVEN FOR OBJECTING TO THE ABOVE DEVELOPMENT(S) BY LOCALS AND OTHERS INCLUDED:

1. The development(s) is(are) a serious threat to Knocksink Woods SAC⁵ (Special Area of Conservation, Priority. Annex I) and a European Natura 2000 Site, as contaminants from the development(s) pre and post construction will run downhill into this SAC.
2. The site in question was a sand and gravel quarry and is where an illegal dump was operated from about 1980 to about 1993 according to locals. It is unknown what materials were dumped here or exact location of the quarry. This information has been passed to Wicklow CoCo (a letter from Fionnuala Rogerson, architect to Wicklow CoCo, and witness statements from three locals can be provided).
3. In the conditions which are associated with the granting of permission to these developments, rather than employing its own consultants and asking the developer to pay their fees and expenses, Wicklow Co Council has included as conditions 11 and 31 the employment by the developer of its own consultants to protect the SAC (EU designated special area of conservation) Knocksink Woods and archaeological finds on the development site!

⁴ The following two proposals for developments were submitted to Wicklow CoCo for planning approval in 2022:

Proposed Development No.: 22789 (Moritz House Capami Ltd)

The development of 98 residential units, a childcare facility, community building, enterprise and employment hub and all associated site development works on lands at Kilgarron Hill, Parknasilloge, Enniskerry, Co. Wicklow

And

Proposed Development No.: 22794 (Capami Ltd)

The development of 31 residential units, a childcare facility, community building, enterprise and employment hub and all associated site development works on lands at Kilgarron Hill, Parknasilloge, Enniskerry, Co. Wicklow

And

The following single proposal for development of an SHD was submitted to An Board Pleanala in 2022

ABP-312652-22 Proposed Strategic Housing Development (SHD): Capami Ltd: 219 no. residential units (135 no. houses and 84 no. apartments): Killgarron Hill, Parknasilloge, Enniskerry, Co Wicklow

⁵ <https://eunis.eea.europa.eu/sites/IE0000725#tab-habitats>

4. Article 6(3)⁶ of the EU Habitats Directive is being breached
5. Draft Wicklow County Development Plan 2022 – 2028 CEO Interim Reports notes the infrastructure in Enniskerry cannot handle the extra development.

To expand on the above:

1) High risk of damage to Knocksink Woods SAC, (Special Area of Conservation, Priority. Annex I). European Site.

Knocksink Woods (SAC) is selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive

- Petrifying springs with tufa formation (*Cratoneurion*) [7220] *Priority status.*
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [910A]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]. *Priority Status.*

Article 6(2) of the EU Habitats Directive (Council Directive 92/43/EEC states that member states must avoid damaging activities that could significantly disturb species or lead to a deterioration in the habitats of the protected species or habitat types and must take all appropriate actions to ensure that no deterioration or significant disturbance occurs.

The developer **has not** fully demonstrated in their submission (**22789**), that the solutions they propose to mitigate any damage to the SAC are “*proven beyond reasonable scientific doubt*”, as required under the EU Habitat Directive. (Please refer to a submission dated 10/3/2022 from the Department of Housing, Local Government and Heritage on behalf of the National Parks and Wildlife Service (NPWS) to An Bord Pleanála re. the previous planning application for this development. (See below attached to this file note) (ABP-312652-22.-This was the previous planning application made to An Bord Pleanála as a strategic housing development).

Their submission raises various concerns in relation to damage to Knocksink Woods Qualifying Interests and specifically the Petrifying springs with tufa formation: -

- “*Assessment cannot be regarded as ‘appropriate’ if it contains gaps and lacks complete, precise, and definitive findings*” and also says “*it has not been shown beyond reasonable scientific doubt as to the effects of the proposed project.*”

There are also uncertainties about ZOC (Zone of Contribution) to this habitat that supports the springs. Furthermore, this development, which is so close to Knocksink

⁶ Legal Text Article 6(3): “Any **plan or project** not directly connected with or necessary to the management of the site but **likely to have a significant effect** thereon, either individually or in combination with other plans or projects, **shall be subject to appropriate assessment** of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will **not adversely affect the integrity of the site** concerned and, if appropriate, after having obtained the opinion of the general public.” [For further info see here: <https://www.mpas-europe.org/toolkit/frequently-asked-questions-article-63-habitats-directive>]

Wood will cause footfall damage, and fly tipping (resulting in invasive species) to this sensitive Special Area of Conservation.

2) The site in question was a sand and gravel quarry and is where an illegal dump was operated from about 1980 to about 1993 according to locals. It is unknown what materials were dumped here or exact location of the quarry.

This information has been passed to Wicklow CoCo (a letter from Fionnuala Rogerson, architect along with witness statements from locals can be provided). As of 21st September 2022, Wicklow CoCo have not interviewed any of the locals, but its inspector has reported that no sign of any dumping was found when a site visit of the proposed development was conducted. (See email "Follow up correspondence with Wicklow Engineer re Illegal Dump at Parknasilloogue").

Should the materials dumped be toxic (e.g., asbestos), this will have a significant effect on a European site – the Natura 2000 site at Knocksink, since the runoff from the development is downhill into Knocksink.

[In addition, since the proposed site for development was at one time a quarry the edges of the quarried area need to be mapped, and from the documents submitted by the developer and the documents associated with the planning authority's decision, no mapping of the quarry at the development site has been submitted with any of the applications by the developers to the planning authorities.]

3) In the conditions which are associated with the granting of permission to these developments, rather than employing its own consultants and asking the developer to pay their fees and expenses, Wicklow Co Council has included as conditions 11⁷ and 31⁸ the employment by the developer of its

and sustainable development

11. Prior to the commencement of development, the applicant shall engage and the services of a Project Ecohydrologist or suitably qualified environmental scientist with hydrogeological experience to carry out Ecohydrological Monitoring of the priority Annex 1 Habitats Petrifying springs and Alluvial Forest within the projects zone of influence prior to construction, during the construction phase and at the post construction/operation stage.

(a) Notwithstanding the role of the Project Manager, the Project Ecohydrologist/Environmental Scientist shall have the authority to halt works should, for example, high levels of silt or other contamination be noted in water samples taken.

(b) An appropriate monitoring programme shall be designed, with reference to Site Specific Conservation Objectives, before the commencement of any construction activities on site and the structure and delivery of that programme shall be agreed with the Planning Authority prior to the commencement of development.

REASON: To safeguard against groundwater pollution and the qualifying interests of Knocksink SAC and the proper planning and sustainable development of the area.

ARCHAEOLOGY

31. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) Notify the Planning Authority/ Department of Culture, Heritage and the Gaeltacht, in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) Employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall address the matters identified in the Archaeological Impact Assessment Report submitted.

(c) Where archaeological material is found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision on the best approach to deal with the archaeology. The developer shall be prepared to be advised by the Department of

Culture, Heritage and Gaeltacht with regard to the necessary mitigation action. The operator shall facilitate the archaeologist in recording any material found.

REASON: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

own consultants to protect the SAC (EU designated special area of conservation) Knocksink Woods and archaeological finds on the development site!

We are highly puzzled and questioning of these conditions. How can a consultant employed by the developer humanly use the power conferred upon him/her by these conditions to monitor impacts of the development on the SAC or halt the development should the impacts become significant? Instead, the consultant(s) should be employed by the planning authority and the cost of his/her employment levied on the developer.

4) Article 6(3)⁹ of the EU Habitats Directive is being breached

The appropriate Assessment Screening (dated 7/9/2022 in relation to the two Planning Applications 22/794 and 22/789) by the CEO of Wicklow CoCo states that '*the proposed development **would not be likely** to have a significant effect on any European site*'. What the directive requires however is that the competent national authority (i.e., Wicklow CoCo or An Bord Pleanála) shall agree to the plan or project only after having ascertained that it **will not** adversely affect the integrity of the site (see footnote below for full text). The statement offered by Wicklow CoCo's CEO therefore falls short of the requirement.

In addition, in its letter dated 10th March to An Bord Pleanála, regarding the application for SHD on this site (See letter attached below), the Department of Housing Local Government and Heritage states of the application:

"The Department considers that it has not been shown beyond reasonable scientific doubt that this development will not have adverse effects on Knocksink Wood SAC, in light of the site's conservation objectives, in particular Petrifying Spring Conservation Objective attribute 'Hydrological regime: height of water table; water flow' and target 'Maintain appropriate hydrological regimes'."

This statement by the Department effectively therefore asserts that the EU Directive is being breached should this planning application proceed as is.

5) Draft Wicklow County Development Plan 2022 – 2028 notes the infrastructure in Enniskerry cannot handle the extra development.

Stage 3 of the draft development plan redesignated Enniskerry as a Level 4: Self-Sustaining Towns Settlement - it is not a growth town.

⁹ Legal Text Article 6(3): "Any **plan or project** not directly connected with or necessary to the management of the site but **likely to have a significant effect** thereon, either individually or in combination with other plans or projects, **shall be subject to appropriate assessment** of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it **will not adversely affect the integrity of the site** concerned and, if appropriate, after having obtained the opinion of the general public." [For further info see here: <https://www.mpas-europe.org/toolkit/frequently-asked-questions-article-63-habitats-directive>]

The Wicklow County Chief Executive writes as follows in the Wicklow County Development Plan Stage 4 section 3 Assessment of Submissions (Dec 2021)¹⁰, page 335:

“While Enniskerry experienced limited growth between 2006 and 2016, a number of developments completed, underway or permitted could result in a growth rate between 2020 and 2025 of 20%. This is very much at the ‘upper end’ of the growth parameters that should be considered for a settlement of scale / type of Enniskerry, particularly with regard to the 30% limit set out in the NPF for non-growth towns.

Having regard to level of growth already experienced / in train and the current deficiencies in the following infrastructure and facilities, Enniskerry is not determined to be well positioned to accommodate significant additional housing growth during the plan period, and focus should be on consolidation and investment in employment, and transport infrastructure / accessibility, in particular:

*-the very low jobs ratio in Enniskerry, with very few employment opportunities in the locality, which results insignificant commuting outflows from the town,
-the inadequacies in public transport services, as well as lack of opportunities to use active modes of transport within the town and to surrounding larger towns (such as Bray) having regard to inadequacies in footpaths and no designated cycleways,
-the significant environmental sensitivities in the area, particularly the Knocksink Wood SAC within the town centre, which is particularly susceptible to changes to the ground and surface water regime in the wider area.*

As set out in the appended ‘Chapter 3 – Proposed Amendments’, the housing target for Enniskerry up to 2031, less units already completed, is 91. However, the development capacity of existing zoned land is in the order of 520 units. Therefore, there is significant over provision, and this will be required to be addressed in the review of the Bray MD LAP in due course. Therefore, it is not considered that there is scope to increase the population target for Enniskerry as part of this Plan.

With respect to zoning requirements in Enniskerry, and AA2 in particular, these will be dealt with in the next review of the LAP for the settlement.”

In the 3rd Chief Executives Report¹¹ page 26 written as part of the process it reads: *“With regard to Enniskerry, the population and housing units target set out in the proposed amended Tables 3.4 and 3.5 is that set out in the Draft Plan and these targets are not the subject of any Proposed Material Amendment, and are not open for review at this stage of plan making; the population and housing targets for Enniskerry as set out in the Draft Plan are a housing unit*

10

<https://www.wicklow.ie/Portals/0/adam/Documents/xlcJBcEvdUqqCOVpoBbtew/Link/Section%203%20Summary%20and%20assessment%20of%20submissions.pdf>

11

<https://www.wicklow.ie/Portals/0/adam/Documents/isXBJMIGKUYbgoVDDwWP4Q/Link/3rd%20Chief%20Executive's%20Report%20on%20Proposed%20Amendments%20draft%20CDP%202022-2028.pdf>

growth of 125 units between 2016¹² and 2031, a growth rate of 20%, which is considered appropriate given that this is a Level 5 settlement.”

In the Senior Engineers Report regarding the Proposed Development the following statements are made in regarding to the planning applications received by Wicklow CoCo:

- *“The shared route from agricultural traffic on residential street with on-street vehicular parking is undesirable for reasons of pedestrian safety.”*
- *“The local primary road L101 I providing access to the site provides a very poor link to the village. It has a very severe gradient, a deficient footpath that does not extend the full distance to the site, no cycle facilities and inadequate drainage and public lighting.”*
- *“The proposed pedestrian improvements submitted for the Glencree Road are welcome but do not sufficiently address the existing inadequate footway provision”*
- *“There is no local network of cycle facilities [...] it does not appear feasible to provide an adequate cycle facility on the L101 I between the site entrance and the village”*
- *“The risk of polluting hydrocarbons reaching the groundwater has not been adequately assessed.”*

Conclusions

- The development proposal for the lands is risking permanent significant environmental damage to Knocksink Wood SAC in breach of the EU’s Habitats Directive and is inconsistent with the principles of conservation, environmental protection and sustainability. (As agreed by Wicklow CoCo and Department of Housing).
- A competent planning authority (Wicklow CoCo’s CEO) disagrees with the development in his Report regarding the draft development plan (Draft Wicklow County Development Plan 2022 – 2028) and its Senior Engineer has reservations regarding the proposed development(s).

Therefore, the part of the area marked AA2¹³ which has not yet been developed should be de-zoned.

ALEX PIGOT – NOVEMBER 2022

¹² The developments which have taken place since 2016 are:

Sika Woods, Kilgarron Hill ~ 44

Redwood, Kilgarron Hill ~ 20

Cookstown, Cookstown Road ~ 40

These new developments add up to over 100 leaving just 25 or so to be built, if the Wicklow CoCo CEO’s 3rd Report referenced above is to be followed and we have a number in the pipeline, one also at the bottom of Kilgarron Hill where the stables used to be.

¹³ The area AA2 bounded by a green line in this map:

<https://www.wicklow.ie/Portals/0/adam/Documents/iKwwWWCVIEKQQTtoEwVz5GA/Link/Appendix%2011%20-%20Local%20Area%20Plans.pdf>