

TABLE OF CONTENTS

2	CHAPTER 2 PLANNING POLICY	2-1
2.1	Introduction	2-1
2.2	National Level	2-1
2.2.1	Report of the Flood Policy Review Group 2004	2-1
2.2.2	European Communities (Assessment and Management of Flood Risks) Regulations 2010 and 2015.....	2-2
2.2.3	Office of Public Works Climate Change Sectoral Adaption Plan, Flood Risk Management 2015 – 2019.....	2-2
2.2.4	National Adaption Framework 2018.....	2-2
2.2.5	Local Authority Adaption Strategy Development Guidelines 2018	2-3
2.2.6	Ireland 2040: The National Planning Framework.....	2-3
2.2.7	Strategic Flood Risk Assessment Report – Ireland 2040	2-3
2.2.8	River Basin Management Plan 2018 - 2021	2-4
2.2.9	Draft River Basin Management Plan for Ireland 2022- 2027	2-4
2.3	Regional Level	2-4
2.3.1	Southern Regional Economic and Spatial Strategy	2-4
2.4	Local Level.....	2-6
2.4.1	Kilkenny County Development Plan 2021 - 2027.....	2-6
2.4.2	Climate Change Adaption Strategy 2019 - 2024.....	2-8
2.4.3	Local Area Plan	2-9
2.5	Cumulative Impacts	2-9
2.6	References	2-11

2 Chapter 2 Planning Policy

2.1 Introduction

This Chapter provides an overview of the general policy context pertinent to the Ballyhale Flood Relief Scheme (FRS) at national, regional and local level. The application for the FRS is being made to An Bord Pleanála in accordance with Section 175 and 177AE of the Planning and Development Act 2000, as amended. A detailed planning assessment is also provided in the accompanying planning statement prepared by McCutcheon Halley Planning. Full details of the proposed project are provided in Chapter 5 of this EIAR.

The Planning Policy Chapter has been completed by Majella O' Callaghan and Orla O'Sullivan of McCutcheon Halley Planning Consultants.

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2.2 National Level

2.2.1 *Report of the Flood Policy Review Group 2004*

In 2004, the Government, following a wide-ranging inter-departmental review of national flood risk management policy, approved the Report of the Flood Policy Review Group. As a result of the recommendations of the report, the OPW were appointed as lead agency for co-ordinating delivery of flood risk management policy. Furthermore, the Government adopted a new policy aimed to proactively address flooding by:

- Prevention - avoiding construction in flood-prone areas.
- Protection - taking feasible measures to protect areas against flooding.
- Preparedness - planning and responding to reduce the impacts of flood events.

There was a noticeable shift in policy, with emphasis placed on:

- A catchment-based context for managing risk.
- Pro-active flood hazard and risk assessment and management, with a view to avoid or minimise future increases in risk that might arise from development in floodplains.
- Increased use of non-structural and flood impact mitigation measures.

The Catchment Flood Risk Assessment and Management (CFRAM) programme seeks to deliver the National Flood Policy, adopted in 2004, and the requirements of the EU Floods Directive.

2.2.2 *European Communities (Assessment and Management of Flood Risks) Regulations 2010 and 2015*

The EU Floods Directive (2007/60/EC) was transposed into Irish law through the European Communities (Assessment and Management of Flood Risks) Regulations. In Ireland, the Regulations assigns the OPW as the Competent Authority under the Directive. Under the regulations, the OPW is responsible for formulating and implementing measures to deal with flooding in Ireland. In the legislation, other agencies including Local Authorities are assigned certain duties regarding flood risk within their own specific areas of responsibility.

2.2.3 *Office of Public Works Climate Change Sectoral Adaption Plan, Flood Risk Management 2015 – 2019*

This document is the current adaptation plan by the OPW. Adaptations are measures undertaken to address current and future risks posed by climate change, the aim of which is to reduce the vulnerability of our environment, society and economy to climate change and increase resilience.

It is a high-level document and sets out the approach and framework for climate change adaptation by the OPW based on a current understanding of the potential consequences of climate change for flooding and flood risk in Ireland, and the adaptation actions to be implemented. The flood risk management plans of the national CFRAM which followed this plan, provides a detailed assessment of adaptation for flood risk management measures in particular locations.

2.2.4 *National Adaption Framework 2018*

The Department of Communications, Climate Action and the Environment's National Adaptation Framework (NAF), Planning for a Climate Resilient Ireland (January 2018) was developed under the Climate Action and Low Carbon Development Act.

The NAF provides a framework to ensure local authorities, regions, and key sectors can assess the key risks and vulnerabilities of climate change, implement actions to build resilience to climate change, and ensure climate adaptation considerations are mainstreamed into all local, regional, and national policy. The NAF also aims to improve

the enabling environment for adaptation through ongoing engagement with civil society, the private sector and the research community. It is reviewed every 5 years.

Under the NAF, sectors and lead Government departments, as well as local authorities, are required to prepare statutory sectoral adaptation plans. Guidelines for preparation of these adaptation plans were published by the Department of Communications, Climate Action & Environment in May 2018 entitled 'Sectoral Planning Guidelines for Climate Change Adaptation'. Under the NAF, Water Resource and Flood Risk Management are within the remit of OPW.

Adaptations are measures undertaken to address current and future risks posed by climate change, the aim of which is to reduce the vulnerability of our environment, society and economy to climate change and increase resilience.

2.2.5 Local Authority Adaption Strategy Development Guidelines 2018

These statutory guidelines, published by the Department of Communications, Climate Action and the Environment, describe the framework and methodology to be followed by local authorities in developing adaptation strategies, and the resources available from the Department to prepare them. Following on from these Guidelines, Kilkenny County Council prepared a Climate Change Adaption Strategy for the period 2019 – 2024 (discussed further in section 4.3.2 below).

2.2.6 Ireland 2040: The National Planning Framework

The National Planning Framework (NPF), published in February 2018, is the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040. The NPF is a region-focused strategy for managing growth, using state lands for certain strategic purposes and supporting this with strengthened, more environmentally focused planning at local level. The NPF is given effect with a 10-year capital investment programme in the National Development Plan (NDP) 2018 – 2027.

2.2.7 Strategic Flood Risk Assessment Report – Ireland 2040

At the draft stage of the NPF process, a high-level flood risk appraisal entitled 'Strategic Flood Risk Assessment Report' was carried out by RPS in September 2017. The purpose of this report was to guide the policies contained in the NPF. It applied the Guidelines to the NPF in accordance with the sequential approach. It identified high level risk and spatial planning issues for the country and set out a policy framework for local authority development plans to address the flood risk issues identified at regional level. There is no specific information relating to Kilkenny in the document though it mentions that the fluvial flood risk in the Southern Region is characterised by the

substantial river catchments including the River Nore and historically, these have caused widespread fluvial flooding to urban and agricultural areas in the region.

2.2.8 River Basin Management Plan 2018 - 2021

The River Basin Management Plans are prepared to set out the actions that Ireland will take to improve water quality and achieve 'good' ecological status in water bodies (rivers, lakes, estuaries and coastal waters) by 2027. Ireland is required to produce a river basin management plan under the Water Framework Directive (WFD).

This second River Basin Management Plan (RBMP) outlines the new approach that Ireland will take as it works to protect its rivers, lakes, estuaries and coastal waters over the four-year period 2018 – 2021. The new Plan builds on the measures implemented during the first planning cycle, but also seeks to implement supporting measures on a prioritised basis, where necessary. With effective implementation of the Plan, Ireland can expect to see actions to improve water quality in over 700 water bodies.

2.2.9 Draft River Basin Management Plan for Ireland 2022- 2027

The Draft River Basin Management Plan (RBMP) 2022 - 2027 has been published under the Water Framework Directive and is the third cycle river basin management plan for Ireland. The plan seeks to protect, improve and sustainably manage the water environment in order to achieve good water quality in rivers, lakes estuaries and seas in Ireland. The Draft Plan undertook a public consultation for 6 months for between September 2021 and March 2022 with the responses received informing the finalisation of the plan. On contacting the Department of Housing and Local Government and Heritage, the responsible body for the preparation and publication of the plan, they have confirmed that the date for its publication is not yet available.

2.3 Regional Level

2.3.1 Southern Regional Economic and Spatial Strategy

The Southern Regional Authority recently adopted the Regional Spatial Economic Strategy (RSES). This encompasses Kilkenny as well as surrounding counties in the southern region. The principal statutory purpose of the RSES is to support the implementation of the NPF and NDP, while including the economic policies and objectives of the Government by providing a long-term strategic planning and economic framework for development of the region.

The RSES sets out 229 regional strategic outcomes in line with the National Strategic Outcomes of the NPF. The Ballyhale FRS is aligned with the regional strategic outcomes on Climate Action, namely sustainable management of water, waste and

other environmental resources, building climate resistance, and enhanced green infrastructure.

The Regional Policy Objectives (RPO) related to Flooding are:

- **RPO 113 Floods Directive:** *It is an objective to support, at a regional level, the implementation of the Floods Directive to manage flood risks. It is an objective to encourage collaboration between local authorities, the OPW and other relevant Departments and agencies to implement the recommendations of the Catchment Flood Risk Assessment and Management (CFRAM) programme to ensure that flood risk management policies and infrastructure are progressively implemented.*
- **RPO 114 Flood Risk Management:** *It is an objective to:*
 - a. *Ensure that the flood risk management objectives of the Flood Risk Management Plans are fully considered in the development of planning policy and decision-making by local authorities so that flood risk is a key driver in the identification of suitable locations for new development, considering the CFRAM flood maps and other flood maps as available.*
 - b. *Ensure that developments in upland areas, such as wind farm developments, roadway construction, peatland drainage and forestry proposals, provide sufficient storm water attenuation to avoid the occurrence of river erosion or flooding downstream subject to hydrological and ground/peat stability assessments.*
- **RPO 115 Flood Risk Management Plans:** *Development and Local Area Plans in the Region should take account of and incorporate the recommendations of the Flood Risk Management Plans, including planned investment measures for managing and reducing flood risk. Natural Water Retention Measures should be incorporated where appropriate in consultation with the OPW and other relevant stakeholders.*
- **RPO 116 Planning System and Flood Risk Management:** *Consideration must be given to future appropriate land-use policies in accordance with the requirements of the Guidelines, “The Planning System and Flood Risk Management 2009”. Strategic and local flood risk assessments and plans should be prepared where appropriate, which should include consideration of potential impacts of flood risk arising from climate change. It is an objective to avoid inappropriate development in areas at risk of flooding and integrate sustainable water management solutions (such as SUDS, non-porous surfacing and green roofs) to create safe places in accordance with the Guidelines.*
- **RPO 117 Flood Risk Management and Biodiversity:** *It is an objective to avail of opportunities to enhance biodiversity and amenity and to ensure the protection of environmentally sensitive sites and habitats, including where flood risk management measures are planned. Plans and projects that have the potential to negatively impact on Natura 2000 sites are subject to the requirements of the Habitats Directive.*
- **RPO 118 Flood Risk Management and Capital Works:** *It is an objective to supports investment in the sustainable development of capital works under the flood capital investment programme and Flood Risk Management Plans developed under the CFRAM process.*
- **RPO 119 Flood Relief Schemes:** *It is an objective to:*
 - a. *Support investment in the sustainable development of Strategic Investment Priorities under the National Development Plan 2018-27 and to ensure that flood risk assessment for all strategic infrastructure developments is future proofed to consider potential impacts of climate change;*

- b. Support investment in subsequent projects by capital spending agencies to deliver flood relief schemes under the National Strategic Outcome, Transition to a Low Carbon and Climate Resilient Society. Such projects should be future proofed for adaptation to consider potential impacts of climate change.*
- c. Ensure that all infrastructure and energy providers/operators provide for adaptation measures to protect strategic infrastructure (including roads, railways, ports and energy infrastructure) from increased flood risk associated with climate change.*
- **RPO 120 Flooding and Coastal Erosion:** *It is an objective to support measures (including Integrated Coastal Zone Management) for the management and protection of coastal resources and communities against coastal erosion, flooding and other threats. Statutory land use plans shall take account of the risk of coastal erosion.*

2.4 Local Level

2.4.1 Kilkenny County Development Plan 2021 - 2027

The recently adopted Kilkenny County Development Plan (KCDP) outlines the policies and guidance relevant to the county. The plan deals with flooding by aligning its policies and objectives with the Strategic Objectives of both the NPF and the RSES. It has also taken cognisance of the Council's own Climate Change Adaption Strategy, discussed further in section 4.3.2.

2.4.1.1 Climate Adaption and Resilience

With regard to Climate Change, the Strategic Aim of Chapter 2 of the KCDP is:

To provide a policy framework with objectives and actions in this City and County Development Plan to facilitate the transition to a low carbon and climate resilient County with an emphasis on reduction in energy demand and greenhouse gas emissions, through a combination of effective mitigation and adaptation responses to climate change.

Strategic Objective 2 of the plan outlines the following in relation to flooding/climate change as follows:

2B *To support the implementation of the National Climate Action Plan and the National Climate Action Charter for Local Authorities, and to facilitate measures which seek to reduce emissions of greenhouse gases by embedding appropriate policies within the Development Plan.*

2C *To promote, support and direct effective climate action policies and objectives that seek to improve climate outcomes across the settlement areas and communities of County Kilkenny helping to successfully contribute and deliver on the obligations of the State to transition to low carbon and climate resilient society,*

2D *To integrate appropriate mitigation and adaptation considerations and measures into all forms of development.*

2E *To ensure that the Development Plan transposes, supports and implements strategic objectives of the National Planning Framework and the Southern Regional Spatial and Economic Strategy to create an enabling local development framework that:*

(a) promotes and integrates important climate considerations in local development and the assessment of planning applications and

(b) supports the practical implementation of national climate policy and targets to assist in the delivery of the national transition objective.

With regard to Infrastructure and the Environment, the Strategic Aim of Chapter 10 of the KCDP is:

To ensure a sufficient level of water services within the county for the implementation of the core strategy, provide a framework for the protection of the environment, including water quality, the avoidance of flood risk and the provision of a high-quality telecommunications infrastructure.

2.4.1.2 Water Framework Directive

For the purposes of implementing the Water Framework Directive (WFD), Kilkenny County Council is implementing the programme of measures to address significant pressures on water outlined in the National River Basin Management Plan 2018-2021 (RBMP) and will for the subsequent RBMP plan 2022-2027. The WFD sets out the strategic response to the threat of pollution and its four objectives are:

- Prevent further deterioration of water quality.
- Restore 'good' status of water quality and quantity for ground waters and 'good' or 'high' status for surface waters;
- Reduce chemical pollution of water sources;
- Achieve protected area objectives;

Objective 10B applies;

10B To implement the measures of the River Basin Management Plan, including continuing to work with communities through the Local Authority Waters Programme to restore and improve water quality in the identified areas of action.

2.4.1.3 Trees and Hedgerows

Chapter 9 of the KCDP acknowledges that woodlands, trees and hedgerows contribute significantly biodiversity and landscape character, and are a vital part of a network of habitats, ecological 'corridors' and 'stepping-stones' essential for wildlife to flourish and move between and within habitats. They also play a vital role in climate adaptation as

they filter out noise, dust and pollutants and help minimise flooding by retaining moisture. Section 9.2.5 identifies that the Council will require future developments to:

- *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. See Appendix G for a list of native trees and shrubs.*

2.4.1.4 Inland Watercourses

The important role that rivers, streams, wetlands and groundwater play as biodiversity resources is acknowledged in Section 9.2.6 of the KCDP. Relevant planning applications shall have regard to the guidance document by Inland Fisheries Ireland entitled '*Planning for Watercourses in the Urban Environment*' (2020).

2.4.2 Climate Change Adaption Strategy 2019 - 2024

Kilkenny County Council prepared a Climate Change Adaption Strategy for the period 2019 – 2024, which has informed the policies and objectives of the KCDP to ensure that the plan appropriately addresses adaption to climate change. The following are the core objectives set out in the strategy:

- Ensure that climate adaptation considerations are mainstreamed into all plans and policies and integrated into all operations and functions of Kilkenny County Council.

- Ensure consideration and understanding of the key risks and vulnerabilities of climate change in the County.
- Implementation of climate resilient actions in a planned and proactive manner.

The Strategy contains a total 95 individual actions under five Adaptation Action Headings with Flood Resilience identified as one of the main areas of focus.

2.4.3 Local Area Plan

There are no existing or draft local area plans (LAP) affecting the areas of the proposed development and the KCCDP 2021 is now the relevant planning policy document for development in Ballyhale.

There is an expired LAP for Ballyhale dating from 2004 which should be used for context only where relevant.

2.5 Cumulative Impacts

EIA provisions in relation to planning consents are currently contained in the Planning and Development Act, 2000, as amended, (Part X) and in Part 10 of the Planning and Development Regulations 2001, as amended, (“the 2001 Regulations”). Schedule 6 of the 2001 Regulations sets out the information to be contained in an EIAR, which includes,

2. (e) (i) a description of the likely significant effects on the environment of the proposed development resulting from, among other things—

(V) the cumulation of effects with other existing or approved developments, or both, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources,

Cumulative effects can result from individually insignificant but collectively significant actions taking place over a period of time or concentrated in a location. A search of Kilkenny County Council Planning database was carried out to identify proposed or permitted projects in proximity to Ballyhale that might result in cumulative environmental impacts when considered in combination with the proposed flood relief scheme. These projects are assessed for potential cumulative impacts by each discipline within the EIAR.

Table 2.1 Projects identified for consideration for potential cumulative impacts.

Planning Ref:	Location	Description	Distance from Ballyhale
19/583	Ballyhale and Kiltorcan, Co. Kilkenny	<p>For the development compromising of the provision of four battery storage containers which are required for the operation of the previously granted solar farm in the townlands of Ballyhale and Kiltorcan, Co. Kilkenny.</p> <p>(Reg. Ref, 16/592 & PL10.247616).</p> <p>The planning application also includes an extension to the operational permission of the solar farm to increased from 25 to 30 years and a reduction in the validity period of planning approval from 10-4 years.</p>	2-4 KM
21/856	Leggetsrath West, Hebron Industrial Estate Kilkenny	<p>To carry out development on a 1.9 hectare site. The development will consist of the construction of a 1769sqm portal frame steel clad building to include 1254sqm of production space, 515sqm of office space, entrance from existing internal road network, carparking, bicycle parking, roof mounted solar photovoltaic cells, connection to existing foul and surface water services, palisade fence to site boundary, landscaping and all associated siteworks.</p> <p>Permission was granted on the 13/10/2021.</p>	25.4 KM
ABP 309306	Castlebanny Windfarm	The construction of 21 wind turbines and ancillary works at Castlebanny, Co. Kilkenny	4.8 km
19/605	Derrynahinch, Kiltorcan Co. Kilkenny	The development consisting of a 10 year permission for the construction of a Solar PV Energy Development within a total site area of up to 9 ha to include an electrical transformer/inverter station modules, battery storage modules, solar PV panels, ground mounted on steel support structures, access roads, fencing and associated electrical cabling ducting and ancillary infrastructure.	3.5km

Planning Ref:	Location	Description	Distance from Ballyhale
		Permission was granted with conditions on the 05/12/2019.	
Part 8 Scheme	R713/R448 Knocktopher to Ballyhale	To provide an continuous footway along the northern verge of the R731 from Ballyhale to the junction at Ballyhale.	2- 4km

2.6 References

River Basin Management Plans - [www.gov.ie /en/publications](http://www.gov.ie/en/publications)

Kilkenny County and City Council www.kilkennycoco.ie