



Fermanagh and Omagh District Council

Draft local plan – representations from Friends of the Earth NI

Friends of the Earth NI wish to make representations in relation to your draft local plan. Our comments principally relate to the planning context for extractive industries in Northern Ireland.

By extractive industries we refer to the most environmentally damaging developments – quarrying, exploration/extraction of minerals and hydrocarbons. We also make reference to intensive factory farms. We consider factory farms an extractive industry given the fact that they extract diversity from habitats, extract from other countries and extract from the social dynamics of family farms. They are also causing severe pollution.

We submit these representations with a view to having these policies included in your draft local plan for your Council area and rebutting draft policies that we consider to be repugnant to the principles of sustainable development.

1.0 Soundness

FoE NI considers that the draft local plan has thus far significantly failed the ‘soundness test’ as considerable surveying and analysis requires to be undertaken to ensure a robust planning framework for your Council area. These main issues regarding a ‘soundness’ deficit relate to:

1. Prematurity – there are too many obvious gaps in understanding that require to be addressed before the public can avail of their ability to consider and digest the draft plan and for the Council to consider alternatives and options. We outline some of our concerns later in this document. We also believe that you are not in position to conduct a legally compliant Habitats Regulations Assessment and a Strategic Environmental Assessment without addressing these significant gaps in knowledge and analysis.
2. Strategic Environmental Assessment – alternatives are only addressed in what could be described as an infantile or tokenistic way. When alternatives are presented there is insufficient analysis of what they mean or insufficient breadth in their scope that takes into account sustainable development, climate change and the principles and policies that underpin the Regional Development Strategy. Alternatives are constrained by a ‘development at any cost’ ethic. There is, in addition, insufficient consideration of transboundary impacts of pollutants to the Republic of Ireland. For example there is no analysis of the nitrates, ammonia and phosphates crises on protected sites or the significant deterioration in recent years of water quality. The duty to restore protected European sites to favourable conservation status is not addressed, in breach of the Habitats Directive, and the duty to adopt a precautionary

approach is ignored. Climate change and the need for mitigation and adaptation is not addressed in any meaningful or coherent way. (We elaborate on the deficiencies of the SEA later in the document).

3. The document fails to address the relationship between community wellbeing and health in the Community Plan and major conflicts over controversial proposals such as proposed goldmines and potential conflicts that may occur in the future over hydrocarbon exploration such as fracking. The Community Plan and this draft plan also fails to address the importance of healthy ecosystems and access to nature as being vital to wellbeing.
4. The document fails to address the impacts of mining and quarrying and intensive agriculture for neighbouring Council areas or the impact of those sites (existing and proposed) that are located in neighbouring Council areas on your Council area. There is no consideration given as to how SEAs for these adjacent Council areas will strategically align together.
5. In general, there is a failure to address the impacts of mining and quarrying and intensive agriculture in relation to transboundary impacts and how the SEAs for both jurisdictions in Ireland will strategically align together.
6. Watersheds are shared between north and south and the cumulative impact of potential impacts from extractive industries and industrialised factory farms are not understood with the degree of scientific certainty needed to inform a robust planning process. In this regard ammonia, nitrates and ammonia pollution from your Council area (from intensive agriculture) is likely to be adversely affecting the Republic of Ireland but nowhere are these land, air and water transfrontier impacts assessed. This is in breach of the SEA Directive, ESPOO Convention and Gothenburg protocol. In this regard the Habitats Regulation Assessment is fatally flawed.
7. In this regard, and taking into account many of our prematurity points that follow, your draft policies and draft strategy are not appropriate as relevant *alternatives* fail to be considered in relation to (a) resource use and the circular economy (such as recycling, urban mining and the surfeit of gold in the world to meet current global industrial needs for 175 years) and (b) sustainable non-factory farm models of farming. Moreover, the evidence base in relation to major environmental problems in your area (climate change, peatland degradation, SAC/SPA/ASSI deterioration, phosphorous, ammonia and nitrates pollution, traffic impacts from unlawful quarries, social impacts from extractive industries etc.) is not adequately addressed and this therefore results in your Sustainability Analysis/SEA being fatally undermined.
8. In this regard, there is no clear mechanism for monitoring the impacts of this draft plan and its proposed policies because the *baseline* has not been established (for habitat impacts, species impacts, assessing unauthorised activities, the recent rise in factory farms etc) and therefore it is not possible to monitor impacts with any reasonable degree of certainty or predictability.

2.0 Extractive industries: proposed policy context

Mining and quarrying provide vital commodities but it is also a sector that is arguably the most environmentally and socially damaging type of land use.

Because of this your Council is required to understand what are the precise economic, social and environmental impacts of existing extraction and the strategic need for proposed extraction. You also have an obligation to reduce carbon dioxide emissions and extractive industries contribute significantly to climate change. These industries also increase tension and conflict and can affect the wellbeing of local communities. These issues ought to have been addressed in your Community Plan. The lessons from fracking conflict in Fermanagh have clearly not been considered.

Because of these issues the protection of the environment and human rights should be core minimum policies for the regulation of this sector through the planning regime. Learning from international best practice we believe your policies should:

2.1 Develop an overarching resource vision that transforms wealth into inclusive sustainable development. Whether to extract or to leave resources in the ground requires questioning of the environmental, social and human rights costs and benefits for the country and for future generations.

2.2 Ensure a mineral resource ownership strategy with the Department for the Economy and the Crown Estates is established and how these mineral rights align with other surface rights to land.

2.3 Strengthen coherence and coordination with other regulatory bodies such as GSNI, Public Health Agency, NIEA and transboundary agencies from the Republic of Ireland.

2.4 Improve enforcement by your Council for existing extractive industries especially existing unauthorised activities which are significant.

2.5 Access to information, public participation and access to justice as required by the Aarhus Convention is a foundation to be established before new consents and licenses are issued. This will provide transparency and ensure an informed public can participate in decision making and provide mechanisms to hold decision makers to account.

2.6 A comprehensive strategy on restoration, financial bonds, and aftercare needs to be established.

2.7 To give certainty and security to other land uses and the human rights of others the Council must address what are the acceptable distances of different types of extractive industries in relation to housing, farming, other land uses, schools and communities.

2.8 You will be aware of the UK commitment to the UN Sustainable Development Goals. I refer you to *Extracting Good Practices* from the United Nations Development programme.

3.0 Precious Minerals: proposed policy

3.1 A policy presumption against the exploration and extraction of **precious minerals** given their destructive impacts on communities, landscapes and ecosystems.

Reason 1: There is sufficient gold in circulation to meet the world's current industrial needs and there are alternatives such as mining existing waste to recover materials.

Reason 2: The policy presumption in favour of mineral exploitation “*in any area*” that may be “*particularly valuable to the economy*” as contained in 6.157 in the Strategic Planning Policy Statement is exceptionally permissive and needs to be challenged by more sustainable policies in your local development plan. This policy in 6.127 effectively gives policy supremacy for mining above *all other* land uses, such as farming, residential use, nature conservation and tourism.

Reason 3: The economic evidence from around the world demonstrates that these industries extract wealth from local economies, can adversely affect jobs in tourism and agriculture and leave long term problems with often irreparable damage that has a negative impact economically.

Reason 4: With the introduction of the plan-led system your Council is not *obliged* to follow the permissive policy and have a duty to pursue your own policies in your development plans.

Reason 5: Given the criteria identified in the following section a precautionary approach is needed to enable the regulatory and legal context ‘catch up’ so a robust planning framework can be established. To do otherwise and accept a permissive policy is premature.

4.0 Quarries and minerals: proposed policies

4.1 A moratorium must be put in place for *new* extractive industries (quarries and minerals etc) until all of the following criteria are met:

- a. A review of permitted development rights for exploration takes place by the Department for Infrastructure. This review has been established by the Department but is yet to be completed.
- b. The Department for the Economy carries out a Strategic Environment Assessment of the issuing of mineral licensing and that its failure to carry this out renders those existing licences in breach of the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004.
- c. In the absence of B your council must carry out its own Strategic Environmental Assessment to comply with the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004.
- d. A *cumulative* assessment on the impacts of all extractive industries in your Council area is carried out to develop a scientifically accurate *baseline* against which all future Environmental Impact Assessments for extractive industries can be reliably assessed.
- e. You carry out a *review of extant consents* for extractive industries (and factory farms) to comply with the legal requirements under Regulation 45, 46, 50, 51 of The Conservation

(Natural Habitats, etc.) Regulations (Northern Ireland) 1995 to ensure compliance with Article 6 of the Habitats Directive.

f. An *objective* assessment is carried out of existing *unregulated* and *unassessed* extractive industries in your Council area to enable you to assess:

- strategic need for further extraction

- current volumes of extracted material (please note the annual minerals statement is not up to date and industry claims require independent verification)

- human rights of communities affected by the industry

- social impacts

- economic impacts

- environmental impacts

g. An *independent economic assessment* is carried out to assess the benefits and disbenefits of extractive industries that addresses at all issues including:

- bonds for councils

- restoration planning

- clean-up costs

- contribution to local economy

- economic damage to other industries

- impacts on road infrastructure, public health, impacts of unlawful extraction on lawful businesses, etc

- benefits and disbenefits of existing extraction

h. Art 18 of the Quarries Order (NI) 1983 requires a return to be made each year by quarries. Until this is carried out and the figures assessed by your Council it is premature to approve any new quarries without objectively validating current extraction and strategic need.

i. ROMPS – The Review of Old Mineral Permission is carried out either by the Department for Infrastructure or a similar exercise independently by your Council (Planning Act (NI) 2011 Schedule 2 and Schedule 3) .

j. An assessment of human rights impacts of existing and proposed extraction addressing

- Access to information, participation and access to justice/redress
- Right to life
- Right to pursue land based livelihoods
- Right to food, water, housing
- Right to health
- Children's rights

- Cultural

rights

It is premature for your Council to develop a robust, defensible and comprehensive minerals policy until these issues are resolved, legal obligations fulfilled, baselines established and orderly planning is carried out.

5.0 Hydrocarbons

5.1 Policy presumption against any hydrocarbon exploration and extraction and support for the statement of paragraph 6.157 in the Strategic Planning Policy Statement “in relation to unconventional hydrocarbon there should be a presumption against their exploitation”.

5.2 Furthermore, there should a presumption against all new fossil fuel infrastructure.

Reason 1: The climate crisis means we have no option but to decarbonise our electricity markets.

Reason 2: The consideration of localised damage to habitats, water and communities.

Reason 3: A presumption in favour is premature given the absence of a Strategic Environmental Assessment for hydrocarbon licensing by the Department for the Economy as required Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004.

6.0 Your draft Minerals Policy is deeply flawed and misleading: in whose economic interest?

6.1 Your Council must carry out accurate and meaningful assessments of landscapes and ecosystems within its area to enable the identification of many areas that should be protected from mining and quarrying. For reasons outlined above the SEA and the Habitats Regulations Assessment are not informed by either the potential impacts of mining, the grave risks posed by the sheer scale of the current mineral licensing regime, the transboundary impacts or adequate consideration to current threats from existing extractive industries, many of which are unauthorised (a major issue that has *not* been identified in your background minerals paper of 2015).

6.2 We are deeply concerned about the permissive policy of supporting minerals in draft policy MIN01 and how you have portrayed these Areas of Constraint on Mineral Development (ACMD). To the public these areas would *appear* on the face of it to have a policy presumption (MIN01 Draft plan Oct 2018) against mineral development. However, the policy within this area of *constraint* is so *permissive* that it is disingenuous and misleading to the public. The policy refers to ‘unacceptable’ impacts but does not say unacceptable to whom.

Does the word ‘unacceptable’ apply to the Council, to the developer or to the community? If a community finds a development of this nature unacceptable can it withdraw its social licence?

The policy exceptions within an ACMD are so generous that they are not exceptions. For example, if there is an extension to existing mineral development, if its less than 15 years old, if its high value etc then development can proceed even in an area of constraint. Some of these so-called exceptions are

subjective ('high value' to whom; in whose economic interest?) and they will facilitate a company, such as a goldmining company, to easily achieve consent *anywhere* within your council area.

6.3 Areas of constraint, such as ACMDs, should have a *definitive* presumption against any extraction. In addition, all ASSIs, SACs, SPAs, Ramsar sites, area of archaeological importance, AONBs, wetlands, watersheds etc. should have a presumption against exploitation for all extractive industries – new and robust Areas of Minerals Constraint must give effective protection to these areas. You have a duty to provide areas which are not disturbed by the damage of extractive industries. You have a duty to protect the human rights of local communities. The Council, moreover, has a legal duty not to approve any extractive industries until the prematurity arguments, as detailed above, are addressed.

6.4 The draft policy for Mineral Safeguarding Areas MIN03 is incoherent. As these areas have not been identified this policy must be removed. It is neither logical nor acceptable to attempt conduct an HRA and an SEA (and various landscape and other assessments) and yet assume that these Areas can be introduced at some stage in the future without being adequately assessed for their impacts. (I also refer you the *Waddenzee* and *Sweetman* rulings of the European Court of Justice which renders this policy in relation to the HRA unlawful.) This policy effectively condemns residents of your area to live under the threat of their land being sterilised because of the prospect of a future designation that gives supremacy to minerals over farming, tourism, nature conservation and the rights of residents. This is highly draconian, potentially unlawful and is contrary to the Aarhus convention and represents the antithesis of sustainable development.

6.5 This policy MIN03 must be removed and robust protective policies for ACMD's must be included that gives protection to human rights, landscapes and provides certainty to other land uses.

6.6 We support the presumption against commercial peat extraction in MIN01.

7.0 Intensive Factory farms

7.1 Your Council should introduce a policy presumption against approval for any new intensive factory farms.

Reason 1: NIEA figures demonstrate that over 90% of protected sites, including international sites such as SPAs, SACs and Ramsar, are *already* being damaged by nitrates and ammonia, the principal source of which is intensive farming.

Reason 2: There is a transboundary major pollution problem from nitrates, phosphorous and ammonia that this problem has *not* been assessed in your SEA or HRA, rendering these documents unlawful.

Reason 3: A *cumulative* assessment on the impacts of all intensive factory farms in your Council area is carried out to develop a scientifically accurate *baseline* against which all future Environmental Impact Assessments for extractive industries can be reliably assessed.

Reason 4: Your Council must carry out a *review of extant consents* for intensive factory farms to comply with the legal requirements under Regulation 45, 46, 50, 51 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 to ensure compliance with Article 6 of the Habitats Directive.

Reason: An *objective* assessment is carried out of existing *unregulated and unassessed* factory farms in your Council area to enable you to assess potential damage from pollution.

Yours faithfully,



James Orr

Director Friends of the Earth, Northern Ireland,