



Tionól Reigiúnach Oirthir agus Lár-Tíre
Eastern and Midland Regional Assembly

European Union (EU) Just Transition Fund (JTF) Programme

Appropriate Assessment Conclusion Statement

Eastern and Midland Regional Assembly (EMRA)

2483902 – AA Conclusion Statement

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RSK GENERAL NOTES

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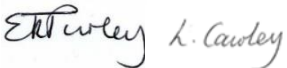

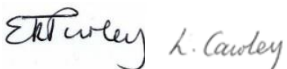

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1.0 INTRODUCTION AND BACKGROUND

1.1 Introduction

- 1.1.1 The Eastern and Midland Regional Assembly (EMRA) has prepared the European Union (EU) Just Transition Fund (JTF) Programme. The EU JTF is a newly established fund under the framework of EU cohesion policy and is being rolled out across all Member States. The purpose of the Fund is to assist the most negatively affected territories in transitioning to a low carbon economy and society, in an effective and fair manner. The Department of the Environment, Climate and Communications (DECC) is the government body overseeing the Fund in Ireland (the “Member State”) and EMRA, as the managing authority, is responsible for the implementation, management, monitoring and evaluation of the Programme.
- 1.1.2 RSK Ireland Ltd. were instructed by the EMRA to carry out an Appropriate Assessment (AA) Screening and produce a Natura Impact Statement (NIS) of the EU JTF Programme. The NIS was produced by RSK Biocensus, an RSK Group Company. This Appropriate Assessment Concluding Statement is a summary of the findings in the NIS. For further details refer to the full NIS, produced in December 2022 (RSK, 2022. *European Union (EU) Just Transition Fund (JTF) Programme Natura Impact Statement (NIS)*).
- 1.1.3 The purpose of the NIS was to provide evidence on the potential for the EU JTF Programme to give rise to impacts on any European site(s) within the Territory and transboundary effects. This has enabled the competent authority (in this instance the EMRA) to make the Appropriate Assessment decision, in accordance with EU and National legislation.

1.2 Background

- 1.2.1 The EU JTF Programme, one of the pillars of the Just Transition Mechanism under EU cohesion policy, aims to mitigate adverse effects of the green transition by supporting the most negatively affected territories and workers in Europe and to promote a balanced socio-economic transition. In line with the JTF’s single specific objective (*JSO8.1. Enabling regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union’s 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050, based on the Paris Agreement*), actions supported will directly contribute to alleviating negative impacts of the transition on employment by supporting diversification and modernisation of the local economy in the most impacted territory.
- 1.2.2 The key task for the EU JTF is to provide new employment opportunities for workers and communities that were heavily dependent on peat. This can be achieved by supporting the diversification of the economy of the target Territory to enable economic development and help impacted workers and communities adapt to a changing labour market. By providing opportunities for employment in the target Territory, the JTF can help to create

an inclusive, attractive, healthy and sustainable place to live, work and visit. A focus on inter-generational sustainability, local development, regenerative tourism and building a green and circular economy will be central to achieving this vision.

1.2.3 The EU JTF Programme will address the investment needs identified via the three complementary Priorities listed below. These are each cross-cut by the key objectives of supporting research, upskilling, and reskilling (through investments which build on regional strengths to address the socio-economic challenges deriving from the transition process in the Territory and facilitate the move towards climate-neutrality):

- **JTF1: Generating employment for former peat communities by investing in the diversification of the local economy** by supporting productive investments in enterprise, SMEs and community actions, focusing on sectors and activities which can address the economic challenge of the transition.
- **JTF2: Supporting the restoration and rehabilitation of degraded peatlands and regeneration and repurposing of industrial heritage assets** to enable the transition towards climate-neutrality while also facilitating the diversification and modernisation of the economy of the Territory.
- **JTF3: Providing former peat communities with smart and sustainable mobility options to enable them to benefit directly from the green transition** by supporting clean, green mobility to build regional attractiveness and support economic development.

2.0 LEGISLATION AND GUIDANCE

2.1 Legislation

- 2.1.1 The Habitats Directive provides legal protection for habitats and species of European importance. Articles 3 to 9 provide the legislative means to protect habitats and species of Community interest through the establishment and conservation of an EU-wide network of sites known as the Natura 2000 Network (also known as ‘European sites’).
- 2.1.2 Natura 2000 sites form a network of areas designated to conserve natural habitats and species that are rare, endangered, vulnerable or endemic within the European Community. This includes Special Areas of Conservation (SACs) (designated under the Habitats Directive) and Special Protection Areas (SPAs) (classified under Directive 2009/147/EC on the Conservation of Wild Birds; the ‘Birds Directive’).
- 2.1.3 Article 6 of the Directive obliges member states to undertake an ‘appropriate assessment’ of any plan or project, individually or in combination with other plans or projects, that is likely to have a significant effect on any European site.
- 2.1.4 Articles 6(3) and 6(4) of the Habitats Directive establishes the general approach and key principles for AA, and states the following:
- ‘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.’*
- ‘4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’*
- 2.1.5 The Habitats Directive (92/43/EEC) and the associated Birds Directive (2009/147/EC) are transposed into Irish legislation within Part XAB (inserted by Section 57) of the Planning and Development (Amendment) Act 2010, and the Birds and Natural Habitats Regulations 2011. The legislative provisions for AA Screening for planning applications are set out in Section 177U of the Planning and Development (Amendment) Act 2010.

2.2 AA Guidance

2.2.1 The NIS was prepared in accordance with the following AA guidance:

- Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC. Commission notice (European Commission, 2021)
- Managing Natura 2000 Sites: The Provisions of Article 6 of the Habitat's Directive 92/43/EEC (European Commission, 2018).
- OPR Practice Note PN01. Appropriate Assessment Screening for Development Management (Office of the Planning Regulator, 2021).
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities. (Department of Environment, Heritage and Local Government, 2010 revision).
- National Parks and Wildlife Service (NPWS) Departmental Circular guidance documents.

2.3 Stages of the Appropriate Assessment process

2.3.1 As set out in the guidance documents above, AA is split into four distinct stages:

2.3.2 **Stage 1:** Screening is the first stage of the process and identifies the likely impacts upon a European site of a plan or project (either alone or in combination). Consideration of likely significant effects should be based on the Source-Pathway-Receptor (S-P-R) risk assessment principle. Mitigation cannot be taken into consideration at this stage of the AA process. If the screening exercise concludes that likely significant effects cannot be ruled out, then Stage 2 of the process (see below) must be undertaken. It is important to note that the burden of evidence is to demonstrate, on the basis of objective information, that there will be no significant effect; if the effect may be significant, or is not known, that would trigger the need for Stage 2 of the process.

2.3.3 **Stage 2:** AA looks at the implications of the effects of the proposals for the site's conservation objectives (alone and in combination). At this stage, it needs to be determined, beyond reasonable scientific doubt, whether or not there will be adverse effects on the integrity of the site. This stage also includes the development of mitigation measures to avoid or reduce any possible impacts.

2.3.4 **Stage 3:** Should the avoidance or mitigation measures detailed at Stage 2 be insufficient to cancel out adverse effects, Stage 3 of the process must be undertaken. Assessment of alternative solutions is the process which examines alternative ways of achieving the objectives of the plan or project that would avoid adverse impacts on the integrity of a European site. EU guidance on this stage of the process states that, '*other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria*'. If alternative solutions exist that do not have adverse impacts on European sites, they should be adopted regardless of economic considerations. This stage of the AA process should result in the identification of the least damaging options for the plan or project.

- 2.3.5 **Stage 4:** Assessment where no alternative solutions exist and where adverse impacts remain. An assessment is made as to whether or not the development is necessary for Imperative Reasons of Overriding Public Interest (IROPI). If it is, this stage also involves detailed assessment of the compensatory measures needed to protect and maintain the overall coherence of the Natura 2000 network. Where a European site include in their qualifying features 'priority' habitats or species, as defined in Annex I and II of the Habitats Directive, the demonstration of 'over-riding public interest' is not sufficient and it must be demonstrated that the plan or project is necessary for 'human health or public safety considerations'. Where plans or projects meet these criteria, they can be allowed, provided adequate compensatory measures are proposed.
- 2.3.6 The NIS document included both Stage 1 and Stage 2 of the Appropriate Assessment process.

3.0 CONSULTATION

- 3.1.1 To assist in the development of the Territorial Just Transition Plan and Programme, a public consultation was carried out from December 2021 to March 2022. The consultation gathered views of a broad range of stakeholders in the Just Transition Territory, including individuals, communities, businesses, social enterprises, civil society and representative bodies. Overall, 240 individuals and organisations engaged with the consultation process. It consisted of written submissions (40), online survey responses from individuals and organisations (82), a series of workshops with the public and with local authority staff and elected members, as well as a workshop dedicated to gathering input from youth (16 to 24-year-olds) in the region, totaling 57 participants.
- 3.1.2 In relation to the EU JTF Programme, a four-week consultation exercise supported by a draft SEA Scoping Report and AA Screening report was carried out in September / October 2022. Responses were received from the Environmental Protection Agency and the Geological Survey Ireland. No specific changes to the AA Screening were required as a result of the consultation.
- 3.1.3 A further four-week consultation exercise supported by the final NIS was carried out in November 2022. Responses were received from DAERA, and the EPA. Some minor text changes were made to reflect the comments.

4.0 APPROPRIATE ASSESSMENT

4.1 AA Screening

- 4.1.1 The Stage 1 AA Screening looked at each of the Priorities and their associated types of actions to determine the potential for likely significant effects as a result of implementation of the EU JTF Programme.
- 4.1.2 Using the source-pathway-receptor model, the screening assessment determined that the potential for likely significant effects could not be ruled out (either alone or in combination) in relation to any of the Priorities set out within the EU JTF Programme (JTF1: Generating employment for former peat communities by investing in the diversification of the local economy; JTF2: Supporting the restoration and rehabilitation of degraded peatlands and regeneration and repurposing of industrial heritage assets; and JTF3: Providing former peat communities with smart and sustainable mobility options to enable them to benefit directly from the green transition).

Screening Conclusion

- 4.1.3 On completion of the AA Screening, the following conclusion was drawn.
- 4.1.4 The potential for likely significant effects could not be ruled out at this stage of the assessment (either alone or in combination) in relation to JTF1, JTF2 and JTF3. It was therefore recommended that Stage 2 Appropriate Assessment was carried out, and a Natura Impact Statement Report was prepared (see below).

4.2 Natura Impact Statement

- 4.2.1 The Stage 2 assessment considered whether implementing the EU JTF Programme had the potential to adversely affect the integrity of one or more European site(s), including the consideration of transboundary effects with sites in Northern Ireland.
- 4.2.2 The development of the EU JTF Programme was a collaborative process, with the SEA being carried out concurrently with the AA, thereby identifying any potential issues at an early stage. This was in line with the Habitats Directive, which promotes a hierarchy beginning with avoidance before considering mitigation. The NIS was based on the EU JTF Programme dated 26/10/2022.

Existing policy framework within the EU JTF Programme

- 4.2.3 Through discussion during the preparation of the EU JTF Programme, potential impacts were identified and addressed at an early stage; this included the addition of an Environmental and Do No significant Harm Statement (added within the text of the EU JTF Programme):

'The Programme includes environmental assessment documents on Strategic Environmental Assessment (SEA), Appropriate Assessment (AA), Strategic Flood Risk Appraisal Screening (SFRA) and DNSH under Regulation (EU) 2021/241 requiring that

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no measure should lead to significant harm to any of the environmental objectives within the meaning of Article 17 of the Taxonomy Regulation (EU) 2020/852.

The Programme will contribute to mainstreaming climate actions and supporting activities that would respect the climate and environmental standards and priorities of the EU. To ensure compliance with the requirements for DNSH, the Programme will support activities that: protect biodiversity, water, air & land quality, and marine resources; encourage circular economy initiatives; reduce waste and increases recycling, and; reduce greenhouse gas emissions.

At the project level, all applications for development consents for activities that may give rise to likely significant effects on the environment must be accompanied by the following, as relevant:

- *SEA Environmental Report*
- *Flood Risk Assessments*
- *Environmental Impact Assessment (EIA) Report*
- *Appropriate Assessment*

Any reference to support for all activities in the Programme should be considered to refer to 'environmentally sustainable development' with no adverse effects on the integrity of European sites and no net loss of biodiversity, that shall be subject to appropriate feasibility studies, best practice site/route selection (to consider environmental constraints such as landscape, cultural heritage, protection of water quality, flood risks and biodiversity), environmental assessment including Ecological Impact Assessment Report to support development management and the completion of statutory SEA, EIA and AA processes as required.

The Programme seeks to protect, manage, and through enhanced ecological connectivity, improve the coherence of the Natura 2000 Network in the Territory.

Support for other plans/programmes (and initiatives arising) is based on compliance with EU and national policy, directives and legislation ensuring appropriate SEA, SFRA, EIA and AA processes are undertaken. The Programme will not support any plans/programmes where adverse effects on the Natura 2000 Network cannot be avoided or mitigated.

The Programme supports relevant development proposals compliant with the Water Framework Directive, that aim to protect inland surface waters, transitional waters, coastal waters and groundwater, preventing pollution, further deterioration of water quality, promotes sustainable water use and enhance improvement of the aquatic environment.

Any planning consent process emanating from support through the Programme will ensure compliance with the EU Waste Framework Directive and Action Plan for the Circular Economy. As such projects will:

- *be subject to the objectives of County Development Plans and Local Area Plans supporting the circular economy and prioritising waste prevention followed by re-use, recycling and recovery before landfill*
- *adhere to Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects (DHLGH) and any updated guidelines*
- *adhere to the National Waste Management Plan for a Circular Economy*

Thereby, minimising the use of natural resource inputs, reducing waste, pollution and carbon emissions and improving the productivity of resources used in development through extending the life span of materials and facilitating the repurposing, recycling and re-use of resources at end of life.'

Assessment and mitigation

- 4.2.4 In line with relevant guidance, the source-pathway-receptor model was used to identify potential impacts of the EU JTF Programme. The implementation of JTF3 was considered to be beneficial to the environment and has the potential to deliver positive benefits for European sites within the Territory, and as such no specific impacts and/or avoidance/mitigation measures were identified.
- 4.2.5 The following potential impacts were identified in relation to JTF1 and JTF2:
- Habitat degradation.
 - Disturbance/ displacement to Qualifying interests (QIs)/ Special Conservation Interests (SCIs) species.
 - Changes in water quality/ hydrology where works are hydrologically linked to a European site(s).
 - Changes in air quality where works take place near a European site(s).
- 4.2.6 Whilst it was considered likely that the majority of projects/ development funded through JTF1 and JTF2 would not lead to adverse impacts on European sites, as the details of such projects were not known at this stage, planners and developers must adhere to measures such as the following to ensure no adverse impacts on integrity of European sites:
- Ensure rigorous site selection processes/ feasibility studies (for example, visitor surveys to determine potential increases in people coming to an area) have been carried out to avoid adverse impacts wherever possible.
 - Where built development projects, regeneration and repurposing projects come forward for funding in areas with QIs/SCIs sensitive to habitat degradation and/ or disturbance/ displacement which cannot reasonably be avoided, ensure impact pathways are fully understood (for example, where regeneration and repurposing of industrial heritage assets could be funded through the EU JTF Programme, feasibility and design studies (including action plans) should be carried out) and that mitigation can be delivered.

- Where upgrading and installing new amenity assets, such as trails, broadwalks and bog bridges are within European sites, ensure impact pathways are fully understood and that mitigation can be delivered where potential for adverse effects have been identified.
- Where potential for habitat degradation has been identified, the following measures to avoid/ reduce impacts on sensitive habitats could be considered: sensitive trail route selection, use of boardwalks and fencing, signage, measures to prevent spread of invasive species, educational information boards, community engagement schemes/ training and employment of rangers/ wardens. Monitoring of mitigation measures should be carried out to determine the need for any remedial actions, if necessary.
- Where peatland restoration and rehabilitation could be funded through the EU JTF Programme, the designs should include a Rehabilitation or Restoration Plan and be in accordance with best practice guidance and EU/ National Legislation. The standard of the rehabilitation should be agreed in consultation with the NPWS. All rehabilitation, regeneration and repurposing should be carried out by those suitably qualified and experienced to carry out the works (including the expertise of workers and contractors formerly involved in peat extraction, as required).
- Where peatland restoration/ rehabilitation could take place within a European site, all actions and associated works would be required to be in accordance with the conservation objectives for the site as well as best practice guidance. All restoration/ rehabilitation should be carried out by those suitably qualified and experienced to carry out such works (including the expertise of workers and contractors formerly involved in peat extraction, as required).
- Where potential for disturbance/ displacement effects during construction works have been identified, measures such as buffer zones/ fencing, timing works to avoid sensitive times (such as bird breeding season, or fish migration periods), noise mitigation and visual screening (natural and artificial). An on-site monitoring plan in terms of noise, lighting etc. combined with behavioural monitoring of the sensitive QI/SCI could also be carried out.
- Where potential for disturbance/ displacement effects during the operational phase have been identified, the following measures to avoid/ reduce impacts on sensitive habitats could be considered; for example, use of fencing, signage, educational information boards, community engagement schemes/ training and employment of rangers/ wardens. Monitoring of mitigation measures should be carried out to determine the need for any remedial actions, if necessary.
- Where built development projects come forward for funding in areas with QI/SCIs sensitive to changes in water quality/ hydrology and/ or air quality which cannot reasonably be avoided, ensure impact pathways are fully understood and that mitigation can be delivered where potential for adverse effects are identified.
- To protect water quality, all new developments would be required to ensure hydrological assessments are carried out to determine the potential for hydrological

links between development sites and European sites, and to produce a Construction Environmental Management Plan (CEMP) which ensures any environmental impacts are avoided or minimised during construction. Drainage strategies may also be required, which could include incorporating Sustainable Drainage Systems (SuDS) features into scheme designs, to ensure the continued protection of water quality/ hydrology during the operational phase. This would be in addition to according with relevant legislation and policy (such as National Policy Objective 57, Marine Strategy Framework Directive, Water Framework Directive and River Basin Management Plans) and relevant UK policy and legislation where transboundary effects could occur.

- To protect air quality, all new developments would be required to ensure air quality assessments are carried out, and to produce a CEMP which ensures any environmental impacts are avoided or minimised during construction. This would be in addition to ensuring any emissions meet appropriate guidelines and complying with relevant policy (such as the emerging Clean Air Strategy for Ireland) and relevant UK policy and legislation where transboundary effects could occur.

4.2.7 For full details of the impact assessment and mitigation measures, refer to the full NIS, produced in December 2022 (RSK, 2022. *European Union (EU) Just Transition Fund (JTF) Programme Natura Impact Statement (NIS)*).

Conclusion (alone and in-combination)

4.2.8 On completion of the Stage 2 Appropriate Assessment, the following conclusion was drawn.

4.2.9 The focus of the EU JTF Programme is to support sustainable development and protecting/ restoring/ enhancing the natural environment. In the long-term, the development and implementation of the EU JTF Programme is considered to be largely environmentally beneficial, with the potential to deliver positive benefits for European sites within the Territory. Overall, none of the Priorities within the EU JTF Programme were considered to be actively directing development in such a location or manner that potential impacts arising from projects receiving funding could not be avoided or mitigated.

4.2.10 It was not possible at this high level to identify all impacts associated with policy implementation; however, the AA process has determined the types of impacts which are most likely to be encountered and identified measures for each of the policies which would avoid/ mitigate for such types of impacts. These measures must be adhered to when allocating funding to ensure that there would be no adverse effects on the integrity of European site(s).

4.2.11 In Ireland, all plans and projects with the potential to impact European sites (regardless of their distance from such sites) are required to comply, as a matter of law, with the Habitats Directive (92/43/EEC) and the associated Birds Directive (2009/147/EC) which are transposed into Irish legislation within Part XAB (inserted by Section 57) of the Planning and Development (Amendment) Act 2010 and the Birds and Natural Habitats

Regulations 2011. Therefore, irrespective of the policy wording or mitigation measures set out in the NIS, statutory AA of plans/ projects would be required. Compliance with Irish legislation (as well as UK policy and legislation where transboundary effects with Northern Ireland have been identified) and the avoidance/ mitigation measures set out against each of the Priorities will provide an overarching safeguard which projects coming forward for funding will be required to adhere to. In line with the 'Do No Significant Harm' (DNSH) EU Regulation (under the 'protection and restoration of biodiversity and ecosystems' environmental objective), the EU JTF Programme would not support any projects where adverse effects on European sites cannot be avoided or mitigated.

- 4.2.12 The Appropriate Assessment (alone and in-combination) therefore concluded that (assuming the avoidance/ mitigation measures set out within the NIS are implemented), there would be no adverse impacts on the integrity of any European sites a result of implementation of the EU JTF Programme.

5.0 AA CONCLUSION STATEMENT

- 5.1.1 Having considered the text of the EU JTF Programme and the conclusions of the NIS, it can be concluded, for the purposes of Article 6(3) of the Habitats Directive that the adoption of the EU JTF Programme would not have significant adverse effects on the integrity of any Natura 2000 sites with the inclusion of the mitigation recommendations.



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