An Taisce
The National Trust for Ireland

Catchments Unit,

Environmental Protection Agency,

Richview,

Dublin 14.

Sent by email to: catchments@epa.ie

16th May 2022

Re: Review of Ireland's Heavily Modified Water Body Designations for the Third Cycle River Basin Management Plan

A Chara,

An Taisce welcomes the opportunity to comment on the Review of Ireland's Heavily Modified Water Body Designations for the Third Cycle River Basin Management Plan.

1. Designation Tests

We note the technical nature of this consultation, and acknowledge the expertise within the EPA to carry out the first phase of this consultation. We have no specific comment in regard to the technical aspects of the identification of HMWBs. However, we do have significant concerns about the appropriateness of the EPA, in their role as technical and scientific experts, carrying out the 'Designation Tests':

"Step 7 Designation test 4 (3)(a) (Restoration measures): Identify restoration measures necessary to achieve GES. Do these measures have significant adverse effects on the wider environment or the "specified uses"?

Step 8 Designation test 4(3)(b) (Alternative options): Can the beneficial objectives served by the modifications of the HMWB be achieved by other means, which are a significantly better environmental option, technically feasible and not disproportionately costly?"

These are very clearly socio-political decisions, and any such policy decisions should be under the ambit of the Department, not a scientific agency such as the EPA.

We are of the view that under no circumstances should the designation tests be assigned to the EPA, and it is vital that the Department take ownership of the second part of this designation process and carry out a thorough and transparent analysis of the justification for designation, underpinned by a cost-benefit analysis with clear identification of the necessary trade-offs. The public must be given the opportunity to assess, understand and comment on any such decisions. Public participation in the designation decisions is critical.

2. Evidence Base

We note that throughout the document there is reference to discussions with the pressure owners in regard to the capacity for restoration of the waterbody to a more natural status. Specifically in regard to the arterial drainage works the following was stated:

"The specified use owner, in this case the OPW, has indicated that on the basis of the best available information, the required restoration measures could not be implemented without impacting on the specified use. It is not technically feasible to maintain these land uses without these schemes in place, so there are no technically feasible alternative options."

We note that no data or evidence was provided by the OPW, or other pressure owners to justify their position. In the case of arterial drainage, it is imperative that flood modelling be carried out to establish just how much of a flood mitigation benefit arterial drainage maintenance offers, and what the implications of ceasing this maintenance would be on land use and homeowners. This same statement applies to all the pressures, and pressure owners identified in the consultation document. This information is critical in order to make the necessary socio-political designation decisions, which should be clearly based on cost-benefit analysis and to give a clear-eyed view of the trade-offs. Article 4(3) of the Water Framework Directive also requires this type of in-depth analysis:

> *"the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate costs, reasonably be achieved by other means, which are a significantly better environmental option."*

This Article would clearly indicate the need for a detailed analysis on a case-by-case basis, to date that has not been provided in the consultation documentation, and as such any designation without such consideration would be in contravention of the requirements of Article 4(3) of the WFD. This type of designation cannot, and should not, be rushed, nor should such decisions be made en masse.

As in Section 1, it is imperative that the public be made aware of any such trade-offs and that they have access to this information.

3. Broader Policy Landscape

In carrying out the designation tests, it is vital that the Department carefully consider the broader policy landscape. That is, changes which will be wrought under various policy and legislative tools, such as CAP, the Climate Act and the EU Biodiversity Strategy. For example. it is likely that practices such as land drainage of peat soil will require cessation, and as such, designating arterial drainage works which facilitate the drainage of these lands would be counterproductive to broader policy objectives. If properly assessed, by means of a solid evidence base and using cost-benefit analysis, these types of concerns can be properly taken into consideration for each pressure type, and each instance within the pressure type.

In conclusion, it is our considered opinion that the information provided in consultation documentation is adequate for the initial technical assessment of heavily modified waterbodies, the 'as-is' situation, but falls far short in regard to the requirements for carrying out the designation tests, which must be carried out by policy makers **with full public participation**.

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Elaine McGoff, PhD

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