Appendix 1: Statement in Support of Derogation Licence Application 2027
(Article 16, Regulation 54, European Union (Birds and Natural Habitats) Regulations 2011, as amended)

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1. Introduction and Legislative Context

1.1
As per Regulation 54 of the European Union (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), as amended, and Question 11.1 of the NPWS derogation licence application form, this report accompanies the application for a derogation licence. It outlines the reason for the derogation, the suitable alternatives considered, and the reasons why such alternatives are not feasible.

1.2
Article 16 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), as transposed into Irish law by Regulation 54, requires that three tests must be satisfied before a derogation can be granted:

a) Demonstration of one or more of the reasons listed in Article 16(1)(a) to (d)
b) Absence of a satisfactory alternative
c) Assurance that the derogation will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range

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2. Test 1: Justification Under Article 16(1)

2.1
This application is made under Article 16(1)(c) of the Habitats Directive, as transposed by Regulation 54(2) of the European Union (Birds and Natural Habitats) Regulations 2011, as amended, in the interests of imperative reasons of overriding public interest.

2.2
The imperative reason of overriding public interest arises from the requirement to establish baseline ecological conditions in advance of proposed development or maintenance works. These baseline surveys are essential to ensure legal compliance with wildlife legislation and to prevent inadvertent

damage or disturbance to bats, which are strictly protected under Article 12 of the Habitats Directive.

2.3

There is no satisfactory alternative to surveying for potential bat roosts where features with roosting potential are present. Failure to survey for bat presence may result in:

a) Unintentional disturbance or harm to bats

b) Destruction or damage to a breeding site or resting place

c) Offences under the European Union (Birds and Natural Habitats) Regulations 2011, as amended.

d) Inadequate mitigation and protection measures being implemented

2.4

In particular:

a) Proposed activities that may impact bats require ecological baseline surveys to establish bat presence or likely absence.

b) The use of an endoscope or similar inspection equipment to establish bat presence within a potential roost feature may cause disturbance to bats, and a derogation licence is therefore required to lawfully undertake such works.

c) All surveying will comply with current science-based best practice and the most recently published guidelines to ensure compliance with the Habitats Directive (92/43/EEC) and Irish wildlife legislation.

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3. Test 2: Absence of a Satisfactory Alternative

3.1

A do nothing scenario is not a satisfactory alternative, as it would result in a failure to carry out bat surveys at sites where features with bat roost potential are present.

3.2

The consequences of not undertaking bat surveys at a building or site that subsequently proves to be in use by bats may include:

a) Delays to works and planning determinations

b) Additional project costs

c) In exceptional cases, the halting of works

d) Most importantly, the risk of unintentional offences under wildlife legislation and harm to bats

3.3

Granting a derogation licence will allow surveys to be undertaken lawfully and will directly benefit bat conservation by ensuring that bat presence is identified and appropriately protected.

3.4

Survey findings will inform planning proposals and project design to:

a) Minimise impacts on bats and their habitats

b) Maximise biodiversity benefits arising from the development

c) Ensure that appropriate mitigation and protection measures are implemented

3.5

The accepted mitigation hierarchy will be applied in all cases:

a) Avoidance of impacts where possible

b) Mitigation of unavoidable impacts

c) Compensation for any remaining unavoidable impacts

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4. Test 3: Favourable Conservation Status

4.1

Evidence is provided that the actions permitted by the derogation licence will not be detrimental to the maintenance of bat populations at a favourable conservation status within their natural range, as required under Regulation 54(2) of the European Union (Birds and Natural Habitats) Regulations 2011, as amended.

4.2

Maintaining a favourable conservation status of bat populations underpins all current best practice guidance. Surveys are required to:

a) Establish baseline ecological conditions

b) Assess habitat suitability at proposed development sites

c) Identify any features with the potential to be used by bats as breeding or resting places

d) Determine possible impacts and reduce harm to bats and their habitats

4.3

Surveys are carried out during appropriate seasons and in accordance with recognised survey standards, including inspections of potential roost sites and, where required, follow-up activity surveys.

4.4

The information obtained through these surveys ensures that:

a) Development or maintenance works can be designed to avoid impacts on bats

b) Appropriate mitigation and compensation measures can be implemented where avoidance is not possible

c) Long term population viability of bat species is maintained at a favourable conservation status

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5. Licensing and Legal Compliance

5.1

Surveys will be undertaken by, or under the direct supervision of, suitably experienced ecologists named on the derogation licence and in accordance with the conditions of that licence.

5.2

It is the responsibility of both the ecologist and the property owner or developer to ensure that all licensing and legal requirements are fully met prior to the commencement of any works that may affect bats or their roosts.

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6. Survey Methodology and Guidance

6.1

Surveys will be undertaken in accordance with current best practice guidance and Irish legal requirements. The methodology employed by Woodrow APEM Group ecologists is informed by the following key guidance documents:

• Collins, J. (ed.) (2023). Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition). The Bat Conservation Trust, London.

• NPWS (2021a). Guidance on the Strict Protection of Certain Animal and Plant Species under the Habitats Directive in Ireland. National Parks and Wildlife Service Guidance Series 1.

• NPWS (2021b). Strict Protection of Animal Species. Guidance for Public Authorities on the Application of Articles 12 and 16 of the EU Habitats Directive. National Parks and Wildlife Service Guidance Series 2.

• Roche, N., Aughney, T., Marnell, F. and Lundy, M. (2014). Irish Bats in the 21st Century. Bat Conservation Ireland, Cavan.

6.2

These guidelines have been developed to standardise survey methodologies and reporting for bat

surveys. Woodrow APEM Group ecologists have drawn on a wide range of expertise and consider that the advice and methods applied represent the best currently available scientific practice.

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7. Circumstances Requiring a Further Derogation Licence

7.1

To ensure that no illegal activities are undertaken, a Consultant Ecologist will require a specific derogation licence, which will be applied for separately if surveys of the structure to be developed confirm that:

a) The site in question is a breeding site or resting place for bats
b) The proposed activity could result in an offence under the European Union (Birds and Natural Habitats) Regulations 2011, as amended.

7.2

Examples of works that are likely to require a licence because they may result in the destruction of a breeding or resting place and/or the disturbance of bats include:

- Demolition of buildings known to be used by bats
- Conversion of barns or other buildings known to be used by bats
- Restoration of ruined or derelict buildings
- Maintenance and preservation of heritage buildings
- Change of use of buildings resulting in increased disturbance
- Significant alterations to roof voids known to be used by bats

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