



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

9th June 2021

Senior Executive Officer,
Planning Department,
Kildare County Council,
Áras Chill Dara,
Devoy Park,
Naas,
Co. Kildare.

Re: Material Alterations to Draft Athy Local Area Plan 2021-2027

A chara,

Thank you for your authority's work in preparing the proposed Material Alterations to the Draft Athy Local Area Plan 2021-2027 (the draft LAP).

As your authority is aware, a core function of the Office of the Planning Regulator (the Office) is the strategic evaluation and assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. This includes a requirement to make submissions on statutory plans, including any observations or recommendations the Office considers necessary to ensure the effective co-ordination of national, regional and local planning requirements.

The Office has evaluated and assessed the proposed material alterations under the provisions of sections 31AO(1) and 31AO(2) of the *Planning and Development Act 2000*, as amended (the Act), and within the context of the Office's earlier observations.

The Office's evaluation and assessment of the proposed material alterations has had regard to the current county development plan, the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly, relevant section 28 guidelines and *Smarter Travel*, the Government's Transport Policy for Ireland (2009-2020).



Overview

As outlined in the Office's submission to the draft LAP, the Office concluded that draft LAP was generally consistent with the RSES, current development plan and relevant section 28 guidelines and that no recommendations were warranted. The Office considered that the draft LAP provided an evidence-based and focused approach to guide development in Athy over the plan period, with particular emphasis on creating high quality spaces within the town and improved permeability to allow people to access facilities and services on foot and by bicycle. The integration of the Area Based Transport Assessment and draft LAP was also strongly supported and welcomed, and indeed has been recommended to other planning authorities by the Office as an example of good practice.

In respect of observations 1, 5, 7 and 8 made by the Office to the draft LAP, the Office welcomes the proposed material alterations made in response to these observations. In respect of observations 2, 3 and 4, the Office accepts the clarification and rationale provided for not making material alterations in the Chief Executive's report on submissions. The issue of including modal shift targets as requested in observation 6 is addressed under MA observation 3 below.

The planning authority is advised, however, that a number of the material alterations raise significant policy issues and are inconsistent with national and regional policies for compact and sequential growth, and sustainable transport. In this regard, it is considered that the material alterations supporting ribbon development and out-of-centre retail development are inconsistent with the *Section 28 Retail Planning Guidelines for Planning Authorities (2012)* and *The Sustainable Rural Housing Guidelines for Planning Authorities (2005)* and would undermine other objectives in the LAP promoting compact growth and retail development and regeneration in the town centre.

This submission makes five recommendations and three observations. These are made in response to the following proposed material amendments:

1. Material alteration no. 3 – objective CSO1.3 and amend Land Use Zoning Map



2. Material alterations no. 8 and 44 – retail objective UCRO2.4 and rezone land from ‘H: Industrial and Warehousing’ to ‘R: Retail’ and consequential changes
3. Material alteration no. 21 – delete a number of Walking and Connectivity Measures from Table 7.1 Walking and Connectivity Measures and Map Ref. 1.1
4. Material alteration no. 43 – rezone land at Woodstock North outside the local area plan boundary
5. Material alteration no. 45 – rezone land on Fortbarrington Road for residential and open space
6. Material alteration no. 46 – change Land Use Zoning Matrix regarding nursing home development on land zoned H: Industrial and Warehousing

Recommendations issued by the Office relate to clear breaches of the relevant legislative provisions, of the national or regional policy framework and/or of the policy of Government, as set out in the Ministerial guidelines under section 28. As such, the planning authority is required to implement or address recommendation(s) made by the Office in order to ensure consistency with the relevant policy and legislative provisions.

Observations take the form of a request for further information, justification on a particular matter, or clarification regarding particular provisions of a plan on issues that are required to ensure alignment with policy and legislative provisions. The planning authority is requested by the Office to action an observation.

A submission can also include advice on matters that the Office considers would contribute positively to the proper planning and sustainable development of the area. The planning authority is requested by the Office to give full consideration to the advice contained in a submission.

1. Material Alteration no. 3

This proposes to insert a new objective CSO1.3: *Provide for serviced sites with appropriate infrastructure in accordance with Objective 18(b) of the National*

Planning Framework (2018), as denoted on Map Ref. 6 Land Use Zoning Map, and amend the zoning map affecting land zoned I: Agricultural in the LAP.

The subject land is located in close proximity to the CSO settlement boundary (adjoining Geraldine Road) to the northeast of the town and lies within an extensive area of land zoned I: Agricultural.

Policy CS1 – Core Strategy states that *‘it is the policy of the Council to support the sustainable long term growth of Athy in accordance with the Core Strategy of the Kildare County Development Plan 2017-2023 (or any succeeding plan), the provisions of the National Planning Framework and the Regional Spatial and Economic Strategy 2019-2031’*, and includes a number of specific objectives to achieve the policy.

In respect of lands zoned I: Agricultural, Table 6.3: Development of Employment Lands zoned under the Athy TDP 2021 – 2027 states:

‘Lands zoned ‘I’ in the immediate rural hinterland of the built-up areas should be reserved for agriculture, rural enterprise, horticulture and equine related activities.’

Economic development objective EDTO1.17 of the draft LAP states:

‘Support and protect the development of agriculture within the agricultural zone in Athy and to protect agricultural and equine uses, from encroachment by urban development uses beyond that needed to cater for the orderly expansion of the town.’

The Strategic Environmental Assessment (SEA) Environment Report accompanying the material alterations includes an assessment of this site stating:

‘Site 8 is classed as a Tier 2 land. It is a greenfield site which if developed would needlessly extend the built-up area of Athy, undermining the principles of compact growth. It is also noted there is potential fluvial flooding in the corner of the site and the site is not adequately serviced...’

The Sustainable Rural Housing Guidelines for Planning Authorities (2005)

‘...recommend against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts.’

The Office is of the view, therefore, that objective CSO1.3 would undermine other objectives in the LAP which promote compact and sequential growth, and would conflict with objective EDTO1.17 to support and protect the development of agriculture within the agricultural zone and to protect agricultural uses from encroachment by urban development. The objective also may also lead to the creation of ribbon development which is recommended against in the *Sustainable Rural Housing Guidelines for Planning Authorities (2005)*.

MA Recommendation 1 - New objective CSO1.3

Having regard to

- (a) Regional Policy Objective (RPO) 3.2 and RPO 3.3 and objective CSO1.1 and other core strategy objectives of the draft LAP which support compact growth,
- (b) objective EDTO1.17 of the draft LAP to support and protect the development of agriculture within the agricultural zone and to protect agricultural uses from encroachment by urban development,
- (c) *Section 28 Sustainable Rural Housing Guidelines for Planning Authorities (2005)*,
- (d) the *Strategic Environmental Assessment Environmental Report* for relevant Proposed Material Alterations,

The Office considers that the proposed material alteration seeking to zone land for serviced sites at a location removed from services/ infrastructure and within the agricultural zone in Athy is in conflict with the above Regional Policy Objectives and policy objectives in the draft LAP, and has the potential to lead to ribbon development which is recommended against in the *Sustainable Rural Housing Guidelines for Planning Authorities (2005)*.



The planning authority is, therefore, required to remove objective CSO1.3 and consequential mapping changes from the draft LAP.

2. Material Alterations 8 and 43

This proposes to insert a new retail objective UCRO2.4 and rezone land from 'H: Industrial and Warehousing' to 'R: Retail' close to the intersection of Upper William Street and the N78.

The subject land is removed from the town centre of Athy and is in an area primarily zoned for H: Industry and Warehousing and Q: Enterprise and Employment.

Having regard to the *Retail Planning Guidelines for Planning Authorities* (2012) (RPGs) and specifically section A 1.6 Types of Location, it is considered that the location the subject of MA 44 is 'out-of-centre' – 'A location that is clearly separate from a town centre but within the town development boundary, as indicated in a development plan or local area plan.'

Section 2.5.2 of the RPGs defines the Sequential Development Approach.

'*Sequential development means that:*

- 1. The overall preferred location for new retail development is within city and town centres. Retail development may also be appropriate within District Centres identified in the settlement hierarchy at a scale appropriate to the needs of the area. See Section 3.4 - District Centres; and*
- 2. Subject to the requirements below, only where the applicant can demonstrate, and the planning authority is satisfied, that there are no sites or potential sites within a city, town centre or designated district centre should an edge-of-centre site be considered. In addition, only in exceptional circumstances where it can be demonstrated that there are no sites or potential sites available either within the centre or on the edge of these centres should an out-of-centre site be considered.' (Emphasis added)*



Section 4.4 of the RPGs sets the Sequential Approach to the Location of Retail Development. In respect of the order of priority where out-of-centre comes after town centre and edge-of-centre sites, it states:

‘Where retail development on an out-of-centre site is being proposed, only in exceptional circumstances where the applicant can demonstrate and the planning authority is satisfied that there are no sites or potential sites either within the centre of a city, town or designated district centre or on the edge of the city/town/district centre that are (a) suitable (b) available and (c) viable, can that out-of-centre site be considered.’

The draft LAP states that *‘Athy has a number of potential regeneration sites located in edge-of-centre locations that could provide additional retail/commercial provision alongside other cultural, residential and amenity areas. These are outlined in Section 3.4.2 of the Athy Urban Regeneration Framework (Appendix 1).’*

The Office also notes that material alterations 39 and 40 propose to rezone the former St. Patrick’s National School and adjoining open space zoned land to Town Centre, which provides a further edge-of-centre site close to the traditional town centre.

The objectives for retail development in the draft LAP namely UCRO2.2, UCRO2.3 and UCRO2.4 direct retail development to the town centre.

Having regard to the out-of-centre location of the site the subject of material alteration no. 44, and the policy emphasis in the draft LAP on regeneration and directing retail uses to the town centre, it is considered that the proposed rezoning is inconsistent with the sequential development approach set out in the RPGs and would be inconsistent with objectives promoting sustainable transport contained in Chapter 7 of the draft LAP.



MA Recommendation 2 – Retail zoning objective

Having regard to the *Retail Planning Guidelines for Planning Authorities* (2012), the Athy Urban Regeneration Framework and objectives for retail development in the draft LAP, and the out-of-centre location of the site the subject of material alteration no. 44, the planning authority is required to delete the proposed rezoning from I: Industry and Warehousing to Retail affecting land on Upper William St and objective UCRO2.4 and consequential changes to Table 11.3 Land Use Zoning Objectives and Table 11.5 Land Use Zoning Matrix as it is inconsistent with the sequential approach in the *Retail Planning Guidelines for Planning Authorities* (2012) and would be inconsistent with objectives UCRO2.2, UCRO2.3 and UCRO2.4 of the draft LAP supporting retail development and regeneration in the town centre.

3. Material Alteration 21

Material Alteration 21 proposes to delete a number of Walking and Connectivity Measures from Table 7.1 Walking and Connectivity Measures and Map Ref. 1.1 Movement and Transport (Walking and Connectivity Measures). Having regard to the strength of national, regional and local policy support for increased permeability and providing more sustainable mobility options for communities, and in particular the excellent work undertaken by your authority to identify key opportunities to link residential areas with local facilities through its Area Based Transport Assessment, the Office was somewhat surprised to see these measures omitted from the draft LAP.

Policy CAM 1 – Climate Adaptation and Mitigation contains objective CAMO1.1 in particular states:

‘It is an objective of the Council to:

CAMO1.1 Support the full implementation of the Kildare County Council Climate Change Adaptation Strategy 2019-2024, or any succeeding document, with regards to its goals, objectives and actions relating to the planning and development of Athy.’

The Vision Statement in the draft LAP also states, inter alia:

‘...The vision for the Local Area Plan will ensure that growth planned for the town over the life of the Plan and beyond occurs in a sustainable and sequential manner, characterised by a compact, consolidated and permeable pattern of development linked by sustainable modes of transport including a robust network of pedestrian and cycle routes, providing a high level of connectivity; facilitating and enabling the creation of a healthy, safe and age-friendly community...’

The Office considers that the removal of these walking and connectivity measures would significantly undermine the sustainable transport strategy informing the local area plan which seeks to provide for a more permeable, compact and sustainable settlement and low carbon development.

MA Recommendation 3 – Walking and Mobility Measures

Having regard to the *Kildare County Council Climate Adaptation Strategy (2019 – 2024)* and *Smarter Travel*, the Government’s Transport Policy for Ireland (2009-2020) the planning authority is required to reinstate the proposed deletions from Table 7.1 Walking and Connectivity Measures and Map Ref. 1.1 Movement and Transport (Walking and Connectivity Measures) outlined in Material Alteration No. 21 as removal would undermine the vision statement and objectives for walking, cycling and improved connectivity set out in Policy MT1 – Walking, Connectivity and Cycling in the draft Athy Local Area Plan.

4. Material Alteration 43

This proposes to rezone a site outside the local area plan boundary to the west of Athy to Existing Residential. The Office acknowledges that there is planning history on the site and that it is the subject of a current planning application for three houses with private wastewater treatment systems which is the subject of an appeal to An Bord Pleanála (Planning Ref. 21/67).

The SEA Environment Report includes an assessment of this site stating:



‘Site 1 is classed as a Tier 2 land. This site was zoned ‘New Residential’ in the Athy Town Development Plan 2012-2018. It was removed from the study as it is outside of the built area of Athy (as defined by the 2016 CSO) and its development would continue unsustainable ribbon development outside the town...’

The Sustainable Rural Housing Guidelines for Planning Authorities (2005)

‘...recommend against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts.’

It is considered that the proposed rezoning would undermine other objectives in the local area plan promoting compact growth such as objective CSO1.1. Further, it is considered that the rezoning may lead to the creation of ribbon development which is recommended against in the *Sustainable Rural Housing Guidelines for Planning Authorities (2005)*.

The section 28 *Development Plan Guidelines for Planning Authorities (2007)* contain factors in determining zoning including the sequential approach where ‘zoning should extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. ‘leapfrogging’ to more remote areas should be avoided)’. In this regard, it is considered that material alteration no. 43 would result in ‘leapfrogging’ of development to more remote areas outside the LAP boundary.

MA Recommendation 4 – Rezoning at Woodstock North

Having regard to the Section 28 *Sustainable Rural Housing Guidelines for Planning Authorities (2005)* and *Development Plan Guidelines for Planning Authorities (2007)*, policies in the draft LAP, the location of the land outside the local area plan boundary, and the Strategic Environmental Assessment Environmental Report for relevant Proposed Material Alterations, the Office considers that the material alteration to rezone the land at Woodstock North for



residential development would result in leapfrogging of development to more remote areas removed from services / infrastructure, and would undermine objective CSO1.1 and the overall vision of the draft LAP which supports compact and sequential development. The Office further considers that the material alteration also has the potential to lead to ribbon development which is recommended against in the Sustainable Rural Housing Guidelines for Planning Authorities (2005).

The planning authority is, therefore, required to remove the proposed rezoning of the land at Woodstock North Athy (Material Alteration No. 43).

5. Material Alteration 45

The land the subject material alteration no. 45 is located in the southwest of Athy. There is established housing to the east and west which is zoned B: Existing / Infill Residential. The Office notes that part of the land proposed for rezoning to for residential overlaps with a small portion of Flood Zone B as indicated in the addendum to the Strategic Flood Risk Assessment.

MA Observation 1 – Flood Risk Management

Having regard to the *Planning System and Flood Risk Management Guidelines for Planning Authorities* (2009) and the *Strategic Flood Risk Assessment (SFRA) Addendum Report* prepared for the material alterations to the draft LAP, the planning authority is requested to amend the zoning proposed in Material Alteration no. 45 on Fortbarrington Road to remove the area in Flood Zone B from the proposed Existing / Infill Residential zoning objective.

6. Material Alteration 46

Material Alteration 46 proposes to change the Land Use Zoning Matrix relating to land zoned for H: Industry and Warehousing at Gallowshill, west of the Dublin Road and N78 roundabout, by including a footnote stating:

‘Nursing homes will only be ‘Open for Consideration’ within the zoning designation ‘H: Industrial and Warehousing’ on lands located to south/east of

the R418 at Dublin Rd/ Gallowshill and denoted by 'H' on Map Ref. 6 Land Use Zoning Map.'*

Table 6.3: Development of Employment Lands zoned under the Athy TDP 2021 – 2027 states the following regarding the employment land at Gallowshill:

'The lands zoned H: Industry and Warehousing are located at the eastern entrance to the town and sited prominently on key routes such as the Kilcullen, Dublin, Castledermot and N78 (Motorway link) roads. Accordingly, a high standard of quality in terms of design, layout and finish along with hard and soft landscaping will be required in order allow such development to announce the entry to the town.

Future development will be for lower-density employment of the light industrial and related uses.'

The Office considers that introducing the potential of a residential type development at this location could undermine the primary purpose of the zone and other objectives in the draft local area plan supporting economic development such as CSO1.5 to 'Focus new enterprise development into lands identified for Industry and Warehousing and Enterprise and Employment uses'.

MA Recommendation 5 – Zoning Matrix change regarding Nursing Homes

The planning authority is required to amend the Table 11.5 Land Use Zoning Matrix to remove the changes regarding the land use Nursing Home on the H: Industry and Warehousing zoned lands at Gallowshill and associated footnote. The planning authority is advised that nursing home development would undermine the primary purpose of the H: Industry and Warehousing zone and objectives in the Athy Local Area Plan 2021 – 2027 supporting economic development such as objective CSO1.5.

7. Other matters

As outlined above, material alterations 32, 33, 34 and 35 propose changes regarding flood risk management in the draft LAP. While the changes are welcome, it is noted



that the new map - reference 2a which overlays flood zone mapping on the land use zoning map, has been incorrectly labelled in the legend. The green zone should be labelled as Flood Zone A, High Probability, and the blue zone should be labelled as Flood Zone B, Medium Probability.

MA Observation 2 - Mapping

The planning authority is requested to amend the legend on Map Ref 2a which illustrates Flood Risk Zones and Site Specific Flood Risk Assessment (SSFRA) overlaid on to Map Ref. 6 Land Use Zoning Map. The planning authority is advised that the green zone should be labelled as Flood Zone A – High Probability, and the blue zone should be labelled as Flood Zone B – Medium Probability.

The Office notes the comments set out in the Chief Executive's report in relation to Observation 6 of the draft Plan. Notwithstanding the comments made about challenges to achieving targets, the Office does consider that there is scope to include high level modal shift targets in the draft LAP specifically arising from the recommendations in the ABTA. Indeed this would assist in setting achievable and realistic targets at a County level.

MA Observation 3 – Modal shift targets

Having regard to the transport objectives and implementation measures set out in the draft LAP and Area Based Transport Assessment, the planning authority is requested to consider including modal shift targets which will assist in measuring the outcomes of infrastructure measures promoting sustainable transport in the town.

In summary

The Office requests that your authority addresses the recommendations and observations outlined above. As you are aware, the report of the chief executive of your authority prepared for the elected members under section 13 of the Act must summarise these recommendations and the manner in which they will be addressed.



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At the end of the process, your authority is required to notify this Office within five working days of the decision of the planning authority in relation to the draft Plan. Where your authority decides not to comply with the recommendations of the Office, or otherwise makes the plan in such a manner as to be inconsistent with the recommendations made by this Office, then the chief executive shall inform the Office and give reasons for this decision.

Please feel free to contact the staff of the Office in the context of your authority's responses to the above, which we would be happy to facilitate. Contact can be initiated through plans@opr.ie.

Is mise le meas,

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Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations

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