

28 July 2021

Planning Department,

Kilkenny County Council,

County Hall,

John Street,

Kilkenny,

Co. Kilkenny

R95 A39T

Re: Material alterations to Draft Kilkenny County Development Plan 2021-2027

A chara,

Thank you for your authority's work in preparing the material alterations to the draft Kilkenny County Development Plan 2021- 2027 (the draft Plan).

As your authority will be aware, one of the key functions of the Office of the Planning Regulator (the Office) includes strategic evaluation and assessment of statutory plans to ensure consistency with legislative and policy requirements relating to planning. The Office has evaluated and assessed the material alterations to the draft plan under the provisions of sections 31AM(1) and (2) of the Planning and Development Act, 2000, as amended, and within the context of the Office's earlier recommendations and observations.

As outlined in the submission of the Office to the draft Plan, the Office considered the draft Plan to be generally consistent with policies in the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) for the Southern Regional Assembly area, and recommended changes to enhance its alignment with national and regional policies in the aforementioned, and for consistency with, inter alia, the Section 28 Guidelines: *Housing*

Supply Target Methodology for Development Planning, Sustainable Residential Development in Urban Areas (2009), Guidelines for Planning Authorities Retail Planning, 2012, Renewable Energy and Climate Change (2017), and The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

In this regard, the Office acknowledges that the Chief Executive's (CE's) report on submissions accepted the majority of recommendations and observations of the Office and recommended changes in response to the issues raised. In particular, the Office welcomes the response of your authority in addressing the issues raised in relation to the core strategy complying with the section 28 guidelines: Housing Supply Target Methodology for Development Planning, the core strategy reallocations to the upper tier settlements of Kilkenny city and Ferrybank / Belview and subsequent the reduction to the rural area, the revised rural housing strategy, the approach to the multi or joint retail strategy for the Waterford MASP, and the monitoring and implementation of sustainable transport and accessibility modal share targets during the life of the plan.

While some outstanding or related issues arising from the planning authority's response to the Office's recommendations or observations on the draft Plan are raised in the recommendations and observations below, the main area of significant concern relates to amendments affecting renewable energy policy and climate action. You will be aware of the importance of action on climate change, the commitment across all of government policy to address this issue, and the role of renewable energy as a means of reducing greenhouse Indeed, chapter 11 of your draft Plan outlines your authority's gas emissions. acknowledgment of, and commitment to, addressing this issue. These policy objectives are however, significantly undermined by the proposed amendments to the draft Plan which not only remove the objective to deliver 100% of electricity demand for the county through renewables by 2030, but also significantly restrict the ability of County Kilkenny to contribute to realising the national target for 70% of electricity generation from renewable sources by 2030 in the Climate Action Plan (2019). The Office is of the view that these amendments are not, for the most part, evidence based, and have been made without consideration of the requirement for consistency with national and regional policy, and in particular the Section 28 Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017). The Office would strongly emphasise the need to address MA Recommendation 3 below in order to ensure that the Development Plan for County Kilkenny provides an overall strategy for climate action and renewable energy that is consistent both across the Plan itself, and with national and regional policy.

The planning authority is advised that section 12(10) of the Act provides the members of the planning authority with scope to make a further modification to an alteration subject to the limitations set out in subsection 10(c) parts (i) and (ii).

The planning authority will note that 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.

The submission below sets out 5 recommendations under following four key themes:

- 1. Core strategy and settlement strategy
- 2. Renewable energy and climate change
- 3. Economic development
- 4. Zoning Amendment.

1. Core strategy and settlement strategy

1.1 Development Approach for Settlements

Tier 2 and 3 Settlements

OPR Recommendations 3 and 5 related to the development approach within Tier 2 and Tier 3 settlements with regard to achieving core strategy and compact growth objectives, including delivering 30% of all new homes within the existing built-up footprints of settlements and urban regeneration. The focus on compact growth is required to support national and RSES policy and to ensure that the Core Strategy strongly supports the viability of urban centres addresses population decline and stagnation, dereliction, urban

decay and poor environmental conditions and to provide a basis to support future investment within the CSO boundary of core strategy settlements in the context of compact growth and regeneration (NPOs 3, 6, 7; RPOs 3, 34, 35).

In relation to the Tier 2 settlement of Ferrybank / Belview, future housing and employment growth will be crucial to achieving the critical mass necessary for the development of the Waterford 'Concentric City' and in complying with NPO 8 which sets out an ambitious population target for the Waterford MASP. The Office welcomes the commitment to carry out a review of the local area plan (LAP within 6 months of the adoption of the Plan and is satisfied that these issues have be satisfactorily addressed through this process.

In relation to Castlecommer, Tomastown, Callan and Graigmamanagh (Tier 3 settlements), the CE report recommends that each of the existing LAPs be reviewed following the adoption and finalisation of the draft Plan, and the Office notes that the CE report generally considers OPR Recommendation 3 is contained within the extant LAPs for Tier 2 and Tier 3 settlements. Having regard to the provisions of section 19(2) and 19(2)(b) of the Act, the Office considers that a firm time commitment to this review process should be set out in the Development Plan.

It is also considered that a focused and transparent process for monitoring and reviewing compliance with the core strategy (policy objective 4D) and compact growth (policy objective 4B) objectives set out in the draft Plan would facilitate policy alignment with NPOs 3, 6, 7 and RPOs 3, 34, 35 and ensure that targets at the end of the plan period are achieved. Defining those lands that will contribute to the achieving of the 30% target within the district town settlements (Tier 3) would also assist with the monitoring the delivery of this target.

MA Recommendation 1- Approach to Development Tier 3 settlements

1. Arising from OPR Recommendations 3 and 5, and having regard to section 19(2) of the Act which requires that a local area plan shall be consistent with the objectives of the development plan, its core strategy and any RSES that applies to the plan, the local authority is required to carry out a review of the LAP's for Callan, Castlecomer and Thomastown to ensure consistency with the county development plan. The review shall ensure as follows;

- a. The local area plans are consistent with the approach with the housing and population requirements set out in the Core Strategy and policy promoting regeneration, sequential development and compact growth consistent as set out in the 'Sustainable Residential Development in Urban Areas (2009)' Section 28 Guidelines, and national and regional policy objectives NPOs 3, 6, 7 and RPOs 3, 34, 35.
- b. The local area plans shall identify regeneration, brownfield and opportunity sites that will contribute to compact growth including delivering 30% of all new homes within the existing built-up footprints of settlements and urban regeneration and sustainable mobility priorities.
- 2. The planning authority is required to include an objective in the draft plan which provides for implementation of (a) and (b) above, and for an effective monitoring regime to ensure that the local area plans are consistent with policy objective 4D (core strategy) and policy objective 4B (compact growth) thus ensuring consistency with NPO 3c, and 7 and RPO 3, 34, and 35. The review of the local area plans and any required amendments to ensure plan consistency in accordance with section 19 (2) (b) of the Act, must be within 12 months of the county development plan coming into effect.

Tier 4 Settlements

The CE recommendation in relation to the Office's Recommendation 4 includes an objective in the draft Plan to undertake an analysis of the specific local objectives for each of the 22 rural Towns and Villages (i.e. policy objective 4La). Although welcoming this additional objective to the draft Plan and acknowledging the constraints and feasibility of complying with OPR Recommendation 4 within the existing timeframes, a stronger objective is required to ensure delivery within the life of the Plan.

Having regard to National Planning Objectives 3c, 6 and 7, Regional Policy Objectives 3, 34, 35 and the scale of housing development, i.e. 10% of the county allocation, attributed to these settlements, the Office considers a strategy for implementation and monitoring is required to ensure the objectives of the core strategy are realised.

The Office considers it would be appropriate, in order to ensure effective implementation and monitoring, to set out a clear timeline and strategic approach to achieving the core strategy

objectives for Tier 4 settlements. It would also be appropriate to set measurable targets (perhaps by settlement at the upper levels) and timelines against which the implementation can be monitored and measured.

MA Recommendation 2 - Approach to Development Tier 4 settlements

- 1. Arising from OPR Recommendation 4, and having regard to Section 10 (2A) (a) of the Act the planning authority is required to revisit Policy Objective 4La in order to strengthen the strategy for development in the larger Tier 4 settlements and ensuring a strategic and structured approach to the implementation of the plan's policy framework, thereby ensuring consistency with National Planning Objectives 3c, 6 and 7 and Regional Policy Objectives 3, 34, 35. In this regard the planning authority is required to:
 - a. Consider provision of land use zoning maps for the larger Tier 4 settlements, including; <u>Ballyragget</u>, <u>Mooncoin</u>, <u>Paulstown</u>, <u>Piltown</u> and <u>Urlingford</u>.
 - b. Refine the development approach within these Tier 4 settlement boundaries to include specific local objectives such as the village core area, focal spaces, amenities and opportunity sites.
 - c. Identify land with development constraints such as flooding on the settlement maps. Where land subject to flood risk is sequentially preferable and could contribute to compact growth, it will be necessary to undertake a Justification Test within the context of the Strategic Flood Risk Assessment.
- 2. The planning authority is required to include an objective in the draft Plan which provides for implementation of (a), (b) and (c) above and the inclusion of an effective monitoring regime to ensure that the these Tier 4 settlements are consistent with policy objective 4D (core strategy) and policy objective 4B (compact growth) of the draft Plan, thereby ensuring consistency with NPO's 3c, and 7 and RPO's 3, 34, and 35. The review of these Tier 4 settlements and any required amendments to the plan shall include provision for a variation to the plan within 12 months of the county development plan coming into effect.

2. Renewable Energy and Climate Change

The Office welcomed and commended your authority's approach in preparing the 'draft wind energy strategy' for the draft Plan having regard to the government's commitment in the Climate Action Plan, National Policy Objective 55, and section 28 guidelines Wind Energy Development Guidelines (2006) and the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*. While the Office acknowledges the environmental sensitivities within your county, the material alterations to the 'draft wind energy strategy' as proposed would significantly weaken the Plan's strategy to align with national policy on renewable energy and climate action and are, for the most part, made without sufficient environmental justification or on the basis of sound technical assumptions.

The Office notes that the elected members rejected the CE's recommendations in respect of alterations to the 'draft wind energy map'. In particular the CE recommended changing the draft wind energy strategy to include an area of 'not normally permissible' within Lingaun Valley area, however the Office notes the elected members directed that both Lingaun Valley and Templeorum is changed to the designation 'not normally permissible'. The Office acknowledges that the elected members directed all other areas to the south of the county, designated as 'acceptable in principle' in the draft Plan, are changed to 'open for consideration'. Furthermore, the renewable energy targets within the draft Plan, as set out in section 11.4 of the draft Plan, were removed by direction from the elected members.

The result of the above is to significantly undermine the contribution of the development plan to meeting national renewable energy targets under the Climate Action Plan, which the Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change 2017* requires the plan to identify as specific targets in megawatts. Specifically, the *SSPR* requires as follows 'to indicate how the implementation of the relevant development plan or local area plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts)'.

As a result of the omission of the renewable energy targets, including wind energy, in Section 11.4 of the draft Plan, the Plan is not consistent with this *SPPR*, and is contrary to national

policy objectives such as NPO 55 and RPO 56 (low carbon economy) and RPO 87 (Low carbon energy future).

It is also noted that in Table 11.3 'Wind Energy Strategy Areas/ Policy Approach' large scale wind farm development will only be considered in areas designated as 'acceptable in principle', and that wind energy development in areas 'open for consideration' is subject to restrictions under Section 11.5.2. This means that the amendments to change geographical areas designated in the draft Plan as 'acceptable in principle' to 'open for consideration' unreasonably and substantially restrict the opportunity for County Kilkenny to contribute to the national targets for renewable energy set out in the Climate Action Plan 2019.

Furthermore the restrictions in relation to the scale of wind farms under section 11.5.2 have no national policy basis for such wind development. This may have implications for the implementation of your plan, including the decisions of An Bord Pleanála in the context of Section 37(2)(b) of the Act.

Having regard to national policy objectives supporting wind farm development such as *NPO* 55, and *SSPR* of the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, 2017, the planning authority is advised that the material alterations to renewable energy is not justified without accurately indicating how the implementation of the development plan will contribute to realising national targets on renewable energy and climate change mitigation, and would therefore be contrary national policy objectives promoting renewable energy and would undermine other regional policy objectives *RPO* 56 (low carbon economy) and *RPO* 87 (Low carbon energy future). The planning authority is revise the plan to ensure the renewable energy section fully complies with *SPPR* of the Section 28 guidelines.

MA Recommendation 3 - Renewable Energy

Having regard to the government's commitment in the *Climate Action Plan* to achieve 70% of electricity from renewable sources by 2030 (adding 12GW of renewable energy capacity nationally), *National Policy Objective 55* which promotes renewable energy use and generation to meet national targets, and section 28 guidelines *Wind Energy Development Guidelines (2006)* and the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*, the planning authority is required to:

- a. Reinstate the renewable energy targets within Section 11.4 of the draft Plan which sets out measurable objectives to generate electricity demand from renewables for the county by 2030 consistent with the *Climate Act Plan*,
- b. Amend material alterations to the 'draft wind energy strategy' as follows;
 - Retain Lingaun Valley area as 'not normally permissible' in accordance with the section 3.1.1.1 of the Report of the Chief Executive on submissions to the Draft Kilkenny City and County Development Plan 2021 – 2027.
 - ii. Reinstate areas designated at Templeorum/Mullenbeg to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
 - iii. Reinstate areas designated at Castlebanny to 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
 - iv. Reinstate the 3 no. smaller areas to the south of the county as 'acceptable in principle' in accordance with the 'draft wind energy strategy' of the draft Plan.
- c. Delete 'acceptable in principle' in section 11.5.2 'small scale wind development projects' under subsection (d).
- d. Indicate how the development plan will contribute to meeting national renewable energy targets, including specific targets in megawatts for wind energy potential in the county, in order to fully implement the Specific Planning Policy Requirement contained in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change and in accordance with the provisions of section 28(1C) of the Act.

3. Economic Development

The Office welcomes the material alterations in relation to OPR Recommendation 7 which sets out an objective to develop a mechanism and deliverable timelines to carry out a joint retail strategy with Waterford City and County Council for the area covered by the

Waterford MASP within 12 months of the plan coming into effect. An alteration to this policy objective is, however, required to ensure that the retail strategy precedes the local area plan for Ferrybank / Belview thereby ensuring that the spatial strategy for the LAP is informed by the retail strategy.

MA Recommendation 4 – Retail Strategy

Arising from OPR Recommendation 7, and having regard to the provisions of the Section 28 Ministerial Guidelines for *Planning Authorities Retail Planning, 2012,* and in particular paragraph 3.5 'Joint or Multi-Authority Retail Strategies', and the Southern Regional Assembly '*Regional Spatial Economic Strategy', 2040,* Waterford MASP Policy Objective 19 (a), the planning authority is required to revise policy 15 (s. 5.4.7 of the draft Plan) which relates to the retail strategy to ensure that a mechanism provides for the preparation of the retail strategy in advance of the Ferrybank / Belview Local Area Plan ensuring that the spatial and land use strategy for the LAP is appropriately informed by the multi-authority joint retail strategy.

4. Zoning Amendment

The Office notes the proposed amendment to change the zoning objective of land on the Dublin road from 'Existing Residential to 'General Business'. In the draft Plan this site comprised a sizable residential land bank (approx. 2.52 ha) located on the Dublin Road and located in close proximity to McDonagh Train Station, also within walking distance the city centre. The redevelopment of the site for residential purposes would have the potential to secure important policy objectives in relation to compact growth, sequential approach to development and regeneration (*NPOs 3, 6, 7; and 72a RPOs 3, 34, 35*). The Office considers, therefore, that the zoning proposed in the material alteration would undermine the potential to achieve these objectives without any evidence to support the requirement for additional land for General Business.

MA Recommendation 5 – Zoning Amendment

Having regard to national policy objectives supporting compact and sequential development in particular *NPO 3c, NPO 16 and NPO 72a*, and the anticipated population growth and requirement for zoned land in central locations as set out in the core strategy, the zoning change from 'Existing Residential' to 'General Business' is not justified and is contrary to policy objectives 4B and 4D of the development plan. The planning authority is required to remove the zoning change at Lands at Lacken - change from General Business to Existing Residential.

Summary

The Office requests that your authority addresses the recommendations outlined above. The report of the Chief Executive of your authority prepared for the elected members under section 12 of the Act must summarise these recommendations and the manner in which they will be addressed.

Your authority is required to notify this Office within five working days of the decision in relation to the material alterations to 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.

The planning authority is strongly advised that the recommendations relate to significant breaches of policy and failure to address the matters raised in the manner outlined prior to adoption of the county development plan may lead to the Office to determine that the Plan fails to set out an overall strategy for proper planning and sustainable development of the area concerned.

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.

Yours sincerely,

Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations