

21st October 2021

Senior Planner, Planning Department, Laois County Council, Áras an Chontae, JFL Avenue, Portlaoise, Co Laois.

Re: Material alterations to Laois County Development Plan 2021 – 2027

A chara,

Thank you for your authority's work in preparing the material alterations to the draft Laois 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 Eastern and Midland 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 *Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities* (2009), the *Urban Development and Building Heights Guidelines for Planning Authorities* (2018), the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012), *the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate* Change (2017), and the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

While it is acknowledged that the material alterations have generally responded in a positive manner to the Office's recommendations and observations, a number of the alterations introduced by the elected members very clearly result in significant breaches of national policy.

The Office would like to commend the planning authority for the material alterations that have been informed by the Housing Supply Target figures (for the plan-period), the revised Strategic Flood Risk Assessment (SFRA), the Infrastructural Assessment Report and acknowledges the significant work that was involved in amending the core strategy table and making consequential changes to land zoning across many settlements.

The Office would like to point out that the draft Plan, <u>save for the material alterations</u> <u>introduced by the elected members</u>, is a sound plan with a high level of consistency with the national and regional policy frameworks. In particular, the Office strongly commends the planning authority for the information provided on baseline modal share and for the inclusion of mode share targets.

Notwithstanding, the Office has identified specific matters below that will need to be addressed in particular the renewable energy policy, including setback distances from wind turbines, the rural housing policy changes and the 3-storey height limit for greenfield sites. The Office has also identified a number of specific zoning amendments that are contrary to national policies or Ministerial Guidelines under section 28.

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).

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 and 2 observations under following six key themes:

- 1. Renewable energy;
- 2. Zoning amendments;
- 3. Rural settlement policy;
- 4. Height limit for greenfield sites;
- 5. Flood Risk Management
- 6. Other Matters

1. Renewable Energy

The Office notes that the elected members rejected the Chief Executive's recommendation to delete the 1.5km setback distance from the Wind Energy Strategy which was requested in response to Recommendation 13 of the Office.

The Office has undertaken analysis of the implications of the policy using separation distances of 1,500 metres from residential development. The Office's analysis concludes that it would not be possible to progress a wind energy project with a 1.5km setback distance across the vast majority of the county's area.

Indeed, the 1.5km setback distance has the effect of limiting the potential for wind farm development to an area in the northwest of the county which is constrained by the Slieve Bloom Mountains Special Protection Area (SPA), Special Area of Conservation (SAC) and proposed Natural Heritage Area (pNHA).

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 2019*, 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. Having regard to the above, the Office considers that the extent of the limitations placed on wind energy through the setback distances would result in conflicting policy objectives in the Laois County Development Plan, which includes climate mitigation objectives promoting wind farm development in the development plan such as CM RE 5 and CM RE 7, and the overarching objectives in Chapter 1 which outline the County's commitment to climate action. 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.

MA Recommendation 1

MA Recommendation 1 - Setback distance from wind farms

Having regard to the government's commitment in the *Climate Action Plan 2019* 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 omit the 1.5km separation distance from Appendix 5 – Wind Energy Strategy.

Material amendment 3.28 proposes additional text regarding wind energy, solar energy and an anaerobic digestor planned for Portlaoise.

The text includes details of national targets for emissions reductions and onshore wind energy, details of wind farms (completed and granted), details of solar farms (completed and granted), and the potential of the planned anaerobic digestor in Portlaoise.

While the inclusion of the above text regarding the energy output from wind and solar energy is welcomed, the Specific Planning Policy Requirement (SPPR) in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), states inter alia, '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); and...'. Notwithstanding the commitment provided for in the above text, the SPPR requires the inclusion of a target and in this regard the following recommendation is warranted.

MA Recommendation 2

MA Recommendation 2 - National renewable energy targets

In accordance with the provisions of section 28(1C) of the *Planning and Development Act 2000* (as amended), and having regard to the government's commitment in the *Climate Action Plan 2019* 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 include specific targets, based on relevant and meaningful metrics, for how County Laois 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).

Material amendment 3.17 proposes an amendment to policy CM RE1 to state 'Prepare a Renewable Energy Strategy for County Laois within 1 year of adoption of the plan'. This will be by way of a variation to the Laois County Development Plan.

While the inclusion of the above policy commitment is welcomed, the Office considers that the timeframe for preparing a Renewable Energy Strategy should be reduced given the urgency for national and local government in relation to meeting targets for climate action.

MA Observation 1

MA Observation 1 – Development Plan Policy CM RE 1

The planning authority is requested to amend policy CM RE 1 to state that the planning authority will prepare a Renewable Energy Strategy for County Laois within 6 months of the adoption of the development plan.

2. Zoning Amendments

The Office has reviewed the proposed amendments to zoning in the material alterations and has concerns regarding a number of instances detailed below where the amendments are not consistent with either/ or compact growth as per NPO 3c and RPO 3.2; the sequential approach to development set out in the *Development Plans Guidelines for Planning Authorities* (2007); the Housing Supply Target (HST) and quantum of land zoned in the Core Strategy. Furthermore, the Strategic Environmental Assessment report also identifies specific concerns in relation to the material alterations.

Portlaoise

- a) Zoning amendments 8 and 9 which would result in leapfrogging to a peripheral location beyond the existing development boundary in the adopted Local Area Plan, inconsistent with compact growth and sequential development, and which is not justified having regard to the HST and quantum of land zoned for Portlaoise in the Core Strategy;
- b) Zoning amendment 85 which would result in leapfrogging to a peripheral location along the N77 beyond the existing residentially zoned land, inconsistent with compact growth and sequential development, and which is not justified having regard to the HST and quantum of land zoned for Portlaoise in the Core Strategy. The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;
- c) Zoning amendment 86 as it is considered premature to rezone land zoned for Transport & Utilities which has the purpose of preserving land for the provision of services such as wastewater and having regard to policies in the Local Area Plan seeking to upgrade wastewater infrastructure (KI O4 and KI P3). The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;
- d) Zoning amendment 87 as it is considered premature to rezone further land for residential purposes within the area identified as the 'sewage treatment plant buffer' in the draft Plan, and outside the development boundary and which is not justified having regard to the HST and quantum of land zoned for Portlaoise in the Core

Strategy. The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;

e) Zoning amendment 89 which is identified in the draft Plan as part of a larger Strategic Reserve for the growth of Portlaoise beyond the current plan period but is inconsistent with compact growth and sequential development for this plan period, and which is not justified having regard to the HST and quantum of land zoned for Portlaoise in the Core Strategy. The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;

<u>Abbeyleix</u>

f) Zoning amendment 91 which would result in leapfrogging to a peripheral location beyond the existing development boundary, inconsistent with compact growth and sequential development, and which is not justified having regard to the HST and quantum of land zoned for Abbeyleix in the Core Strategy. The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;

Stradbally

g) **Zoning amendment 92** which would result in leapfrogging to a peripheral location beyond the existing development boundary, inconsistent with compact growth and sequential development, and which is not justified having regard to the HST and quantum of land zoned for Abbeyleix in the Core Strategy. The SEA also raises concerns in relation to the likely significant effects of this proposed amendment;

<u>Timahoe</u>

h) Zoning amendment 98 which proposes to zone a substantial area of land for residential development beyond the settlement boundary and in the absence of wastewater infrastructure to serve this small rural settlement, and where other zoning changes for residential development in the vicinity are also proposed (zoning amendments 81 and 84).

MA Recommendation 3

MA Recommendation 3 - Zoning amendments

Having regard to national and regional policy objectives promoting compact growth namely NPO 3c and RPO 3.2, section 4.19 of *Development Plans Guidelines for Planning Authorities* (2007) in respect of the sequential approach, the Housing Supply Target (HST) and quantum of land zoned for housing in Portlaoise, Abbeyleix and Stradbally in the Core Strategy, and the Strategic Environmental Assessment report, the planning authority is required to omit the following zoning amendments from the draft Plan:

- Portlaoise: Zoning amendments 8, 9, 85, 86, 87, and 89
- Abbeyleix: Zoning amendment 91
- Stradbally: Zoning amendment 92
- Timahoe: Zoning amendment 98.

3. Rural settlement policy

As outlined in the Office's submission to the draft Plan, the rural housing policy in the draft Plan was considered to have a high degree of consistency with national and regional policy. The Office acknowledges that the Chief Executive recommended further refinements to the rural housing policy in the draft Plan including to the mapping of the rural area typologies. The further refinements recommended by the Chief Executive are welcomed and respond to Recommendation 7 of the Office's submission on the draft Plan.

Notwithstanding, the elected members introduced Material amendments 4.6 and 4.7 (Motion No. 3) which delete the rural housing policy (section 4.6) in the draft Plan including NPO 19, designations, rural area typologies, maps and local needs criteria, and insert a new section 4.6 Open Countryside and Rural Housing including map 4.1 – Rural Area Designations.

The Office notes that the revised rural housing policy contains outdated references e.g. National Spatial Strategy, does not reference the current national and regional planning policy frameworks (NPF and RSES) or climate action legislation and the need to transition to a low carbon society. The Office also notes that the area designated as 'areas under strong urban influence' in the revised rural housing policy is significantly smaller and has not been informed by the EMRA Functional Urban Areas (FUAs).

In summary, the revised rural housing policy contains outdated references and does not benefit from reflecting the NPF and RSES and in particular, NPO 19 and RPO 4.80 and RPO 4.81, concerning the policy approach to one-off rural housing taking account of the viability of smaller towns and rural settlements. Further the revised policy does not reference climate action legislation or the need to transition to a low carbon economy.

Arising from the recent national and regional policy frameworks in relation to rural housing which have emerged, NPO 18b and RPO 4.78 require that development plans support the development of new homes in small towns and villages to provide an alternative to urban generated rural housing in the open countryside. The application of an evidence-based approach is also required under NPO 20, and supported by NPO 36 and the RSES.

It would therefore appear that the planning authority has not had proper regard to the *Sustainable Rural Housing Guidelines* (2005) as required by section 28(1) of the Act and has not ensured that the development plan is consistent with policies in the NPF and RSES for the EMRA area as required under section 27(1) of the Act.

MA Recommendation 4

MA Recommendation 4 - Rural Housing Policy

Having regard to the Government's commitment to climate action and the need to transition to a low carbon society, the *Sustainable Rural Housing Guidelines* (2005), NPOs 20 and 36 of the National Planning Framework, and the Regional Spatial and Economic Strategy (pages 18, 19 and 95), the planning authority is required to review the written statement of the plan and maps relating to rural settlement policies, including the rural area types under the proposed material amendment numbers 2.10, 4.6 and 4.7, to ensure that the evidence basis for the policy framework is consistent with national and regional policy.

Where the planning authority cannot satisfy itself that the subject material alterations are consistent with up to date data, mapping and policy, the planning

authority should reconsider the material alterations and revert to the original draft Plan concerning same.

4. Height limit for greenfield sites

Material amendment 13.3 relates to motion no. 2 and was included on the direction of the elected members. It introduces a new policy as follows:

'Policy XXXX Developments shall be no more than 3 storey on greenfield sites.'

In respect of numerical limitations on building height, the Specific Planning Policy Requirement (SPPR) 1 of the *Urban Development and Building Heights Guidelines for Planning Authorities (2018)*, states the following:

'In accordance with Government policy to support increased building height and density in locations with good public transport accessibility, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and <u>shall not provide for blanket numerical limitations on building height</u>'. (Emphasis added)

The NPF also places an emphasis on the use of performance based criteria with NPO 13 stating 'In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.'

Having regard to the above SPPR1 of the Guidelines and NPO 13, the Office considers that the introduction of a mandatory height limit for greenfield sites is inconsistent with national policy and would undermine other objectives in the development plan that promote compact growth and more efficient use of land.

MA Recommendation 5

MA Recommendation 5 - Height limit for greenfield sites

Having regard to Specific Planning Policy Requirement 1 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018) and National Policy Objective 13 of the National Planning Framework, the planning authority is required to omit the policy – 'Developments shall be no more than 3 storey on greenfield sites' (material amendment no. 13.3) as the introduction of such a blanket height limitation without any evidential basis is contrary to the aforementioned national policies and would undermine other objectives in the development plan that promote compact growth and more efficient use of land.

5. Flood Risk Management

The planning authority has updated the SFRA and made a number of zoning amendments to remove lands at risk of flooding. The Office also acknowledged that details of the justification tests for each settlement have been outlined in the SFRA. The changes are generally acceptable and respond to Recommendation 15 and Observation 5 of the Office's submission to the draft Plan.

Notwithstanding, the mitigations and recommendations deriving from the Justification Tests such as limiting development on residentially zoned land in Flood Zones A and B to extensions, renovations and changes of use, have not been incorporated into the plan supported by policy objectives.

MA Observation 2

MA Observation 2 – Flood Risk Mitigation

The planning authority is requested to insert additional policy objectives into the final plan consistent with the mitigation measures arising from the justification tests contained in the Strategic Flood Risk Assessment (SFRA). In this regard, the planning authority is advised to include general policy objectives which point to the more specific requirements outlined in the SFRA.

6. Other Matters

In respect of Material Amendment Appendix 1 - RPS 1.1, the Strategic Environmental Assessment (page 105) states 'This alteration would reduce the protection of architectural heritage by removing a structure that merits inclusion on the Record of Protected Structures (the structure is identified as being of regional importance by the NIAH).

The planning authority is advised to review the removal of the above from the Record of Protected Structures in consultation with the Department of Housing, Local Government and Heritage.

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 12 of the Act must summarise these recommendations and the manner in which they will be addressed.

The planning authority is strongly advised that the above 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.

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,

AM C'Gnue

Anne Marie O'Connor

Deputy Regulator and Director of Plans Evaluations

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