



Oifig an  
Rialaitheora Pleanála  
Office of the  
Planning Regulator

Our Ref: AD-025-22

22 February 2022

Mr. Peter Burke TD  
Minister for Local Government and Planning  
Department of Housing, Local Government and Heritage  
Custom House  
Dublin 1  
D01 W6X0

**BY HAND AND BY EMAIL**

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act  
2000 (as amended) – Laois County Development Plan 2021-2027**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Laois County Development Plan 2021-2027 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the Planning and Development Act 2000, as amended, ('the Act') to issue a Notice to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with the Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)* and the Specific Planning Policy Requirement 1 contained in the *Urban Development and Building Height Guidelines (2018)* published by the Minister under Section 28 of the Act.

Specifically the Development Plan:

- i. does not indicate how the implementation of the Development 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);
  - ii. introduces a mandatory setback distance for wind turbines from specified land uses or classes of land use without demonstrating compliance with (i) above;
  - iii. introduces a policy with a mandatory height limit for residential development on greenfield land which provides for a blanket numerical limitation on building height.
- b) the Development Plan has not been made in a manner consistent with recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with national policy objectives (NPOs) of *Project Ireland 2040 National Planning Framework* (the NPF) and the regional policy objectives (RPOs) of the *Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy* (the RSES) and to have regard to the *Section 28 Development Plans Guidelines for Planning Authorities (2007)*. Specifically in relation to particular material amendments to the draft Development Plan adopted by the elected members, the Development Plan does not support compact growth and sequential development in certain towns (Portlaoise and Stradbally).
- c) as a consequence of the above matters, the Development Plan made by Laois County Council ("the Council") fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of Section 10(1) of the Act; and
- d) the use by you of your function to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter. This letter is a Notice to you pursuant to section 31AM(8) of the Act.

## **1. Background**

The Draft Laois County Development Plan 2021 – 2027 (the draft Plan) was on public display from 12<sup>th</sup> January 2021 to 23<sup>rd</sup> March 2021.

The Office made a submission to the draft Plan containing 15 recommendations and 7 observations on 23<sup>rd</sup> March 2021.

In relation to the overall pattern of development proposed by the Council under the Core Strategy of the draft Plan, the Office was generally satisfied with the approach in respect of Portlaoise and Stradbally, subject to revisions to the Core Strategy Table to align with the Ministerial Letter relating to *Structural Housing Demand in Ireland and Housing Supply Targets (December 2021)*, and the associated Section 28 Guidelines: *Housing Supply Target Methodology for Development Planning (2021)*, which had been published after the draft Plan was published for public consultation (Recommendation 1 of the Office's submission to the draft Plan).

The Office acknowledged that the densities set out in the Table 13.4 of the draft Plan were generally consistent with the Guidelines, and that policy CS 15 promoted higher densities in Portlaoise.

The Office was satisfied that the draft Plan did not contain any blanket numerical limitation on building height.

Recommendation 12 of the Office's submission to the draft Plan required the planning authority to demonstrate Laois County's share of the national renewable energy target in order to fully implement the Specific Planning Policy Requirement (SPPR) contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*.

Recommendation 13 of the Office's submission to the draft Plan required the deletion of development control standard 6.1 – Buffer Zones - in its entirety from the Wind Energy Strategy in appendix 5 of the draft Plan.

The Elected Members, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions received (dated 17<sup>th</sup> November 2021), resolved to amend the draft Laois County Development Plan 2021-2027 on 1<sup>st</sup> September 2021.

The material alterations to the draft Plan were on public display from 23<sup>rd</sup> September 2021 to 21<sup>st</sup> October 2021.

The material alterations included a number of changes including:

- material amendment no. 13.3 which inserted a policy to require that *'Developments shall be no more than 3 storey on greenfield sites'*.
- A series of individual material amendments to the land use zoning objectives to zone additional land for residential use.
- material amendment no. 3.17 which amended policy CM RE 1 to read: *'Prepare a ~~Local Authority~~ Renewable Energy Strategy (LARES) for County Laois ~~during the lifetime of the plan~~ within 1 year of adoption of the plan. This will be by way of a variation to the Laois County Development Plan.'*

The Office made a submission on 21<sup>st</sup> October 2021 to the material alterations to the draft Plan containing 5 recommendations and 2 observations. The Office's submission letter stated:

*'..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 point out that the draft Plan, save for the material alterations introduced by the elected members, 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 elected members of Laois County Council resolved to make the Laois County Development Plan 2021 – 2027 at their Special Meeting of the Council held on 25<sup>th</sup> January 2022.

Subsequently, the Chief Executive sent a notice letter under Section 31(AM)(6) of the Act dated 1<sup>st</sup> February 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with.

The notice letter stated that MA Recommendations 1, 3, 4 and 5 had not been complied with in full and that the elected members had adopted further minor changes in respect of MA Recommendation 2, however this did not include a specific target for renewable / wind energy.

Having reviewed the CE's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the below, the recommendations of the Office have been responded to in the reports and/or Notice and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

## **1.1 Wind energy setback distance - Recommendation 13 and MA Recommendation 1**

Recommendation 13 and MA Recommendation 1 of the Office's submission on the Draft Plan and material alterations to the draft Plan respectively required the planning authority to address item 3 of the Specific Planning Policy Requirement (SPPR) contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)* published by the Minister under Section 28 of the Act.

Recommendation 13 – Wind Energy Strategy stated:

*The planning authority is required to delete development control standard 6.1 – Buffer Zones in its entirety from the council’s wind energy strategy in appendix 5 of the draft development plan as the inclusion of a requirement for such a separation distance between wind turbines and schools, dwellings, community centres and public roads would restrict the potential for wind farm development in the county (areas open for consideration), would undermine other policy objectives supporting wind farm development and be contrary to national policy and Ministerial guidance on wind farm development.*

MA Recommendation 1 - Setback distance from wind farms stated:

*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.*

The Office’s submission to the material alterations also advised the planning authority that it had undertaken analysis of the implications of the 1.5 km setback from residential development stating:

*‘...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 CE's recommendation was to make the Plan without the 1.5 km setback from wind turbines, contained in Section 6.1 of Appendix 5 – Wind Energy Strategy:

*'...The Chief Executive is of the opinion that retaining the 1.5km buffer contradicts this part of the Draft Plan, and would also undermine the overarching national policy and Climate Action Plan, 2019 which seeks to increase renewable onshore wind energy capacity by 2030.*

*The Chief Executive therefore accepts that the 1.5km development management standard be removed from Section 6.1 of Appendix 5...'<sup>1</sup>*

However, the elected members did not accept the CE's recommendation to make the Plan without the 1.5 km setback and resolved to make the Plan with the said setback.

The reasons provided in the notice letter are:

1. *'The undisputed shadow flicker from the rotating blades on the windmills;*
2. *There is regularly background noise from the turbines at different times during day and night;*
3. *The wind turbines now being proposed are far bigger, taller, and create far bigger shadow flicker than the ones that were put up a few years ago;*
4. *The existing Guidelines for Planning Authorities (2006) are outdated and don't provide guidance.'*

The Office acknowledges the concerns expressed by elected members regarding the potential impacts of wind energy developments on local residents, in particular shadow flicker and noise.

However, no evidence has been put forward in relation to the requirement for a 1.5km setback distance to protect against these impacts either in general, or in relation to County Laois in particular, and 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 as set out in the Office's submissions on the material alterations.

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<sup>1</sup> Chief Executive's Report on material alteration submissions, pages 21 and 22

In this regard, the Office notes that Section 6 of Appendix 5: Wind Energy Strategy provides development management standards in respect of, inter alia, shadow flicker and noise, and Section 7 provides guidance on siting and design including for different landscape types.

The Office also notes that the *Wind Energy Development Guidelines (2006)* provide guidance in relation to a wide range of environmental implications, including shadow flicker and noise, and including the use of planning conditions.

A similar approach is provided for in the *Draft Revised Wind Energy Development Guidelines (2019)*.

In relation to the reason given by elected members that the Wind Energy Guidelines are out of date and do not provide guidance, the Office notes that the *Interim Guidelines* were published in 2017 and contain an SPPR which requires a local authority to, *inter alia*, indicate how the implementation of the development 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) (item 2). A local authority is required to demonstrate detailed compliance with item number (2) in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan (item 3).

Furthermore, national policy on renewable energy and climate action has also been published, including two recent Climate Action Plans (2019 and 2021) which set out overall national targets.

The Office further notes the policy objectives in the adopted Plan, including climate mitigation objectives promoting wind farm development 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.

A map showing the results of the Office's analysis of the implications of the separation distance as referenced above, is attached to this letter at Appendix A. This map demonstrates that it would not be possible to progress a wind energy project in the vast majority of the county and would significantly limit or constrain renewable energy projects to the extent that the inclusion of the 1.5km setback



distance is inconsistent both with national policy, and the aforementioned policy objectives of the Development Plan.

## **1.2 National renewable energy targets- Recommendation 12 and MA Recommendation 2**

While the adopted Development Plan includes policy CM RE 1 to *'Prepare a Renewable Energy Strategy (RES) for County Laois and commencement of the variation to the County Development Plan within 1 year of adoption of the plan...'*, the policy does not 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).

Recommendation 12 and MA Recommendation 2 of the Office's submissions on the draft Plan and material alterations to the Draft Plan respectively required the planning authority to address item 2 of the Specific Planning Policy Requirement (SPPR) contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)* published by the Minister under Section 28 of the Act.

Recommendation 12 – National renewable energy targets stated:

*In accordance with the provisions of section 28(1C) of the Act, the planning authority is required to amend Chapter 3 in the Draft Plan 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. This will require the planning authority to indicate how the designation of areas for renewables development under the policies and objectives of the plan will contribute to meeting national renewable energy targets including specific targets in megawatts for wind energy potential in the county. In the absence of any nationally determined targets for County Laois specifically, you are advised to demonstrate appropriate metrics in this regard,*

*which could include Laois's share of estimates of additional national renewable electricity target (4GW) as defined by the % of national land area represented by the county, linked back to the cumulative renewable energy production potential of the areas designated for renewables development.*

MA Recommendation 2 – National renewable energy targets stated:

*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).*

The CE's report on the MA submissions recommended an amendment to Section 3.5.5 of the draft Plan which did not include a specific target. The CE recommended the following text:

*'...The Planning Authority notes that there is still an absence of national guidance on how local authorities can set a target for wind energy generation within their functional area. However, in accordance with the Specific Planning Policy Requirement for the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017), Table XXX demonstrates County Laois's contribution in terms of permitted applications to realising overall national targets (under the Climate Action Plan) on renewable energy and climate change mitigation.*

*The Council has had regard to the wind farm, solar farm and Anaerobic Digestion developments, permitted and undeveloped as well as those under construction, which have the potential to be delivered in the plan period if*

*constructed. It is apparent from the table below that decarbonized energy infrastructure in County Laois, for which statutory consent exists, can provide the following energy to the local and national grid.*

<i>Wind Energy Output by the end of the Plan Period</i>	<i>119.4MW</i>
<i>Solar Energy Output by the end of the Plan Period</i>	<i>137.7 MW</i>
<i>Anaerobic Digestion Output by the end of the Plan Period</i>	<i>4,300 MWh per year</i>

*The specific targets for the Region and County will be designed on foot of a Regional Renewable Energy Strategy which will also identify targets at a county level, taking into account the complexities of the receiving environment, a consistent approach to designations and cross boundary issues.* (Emphasis added)

The elected members accepted the CE’s recommendation<sup>2</sup>.

The notice letter does not outline reasons for not including specific targets required by the SPPR and as set out in MA Recommendation 2. Furthermore, no time period is specified for the completion of the Strategy.

In this respect, the *Climate Action Plan* (2021) includes a target of an additional 8GW of onshore wind capacity by 2030 in order to achieve up to 80% of electricity generation from renewable sources. The plan period for the Development Plan is 2021-2027. This is, therefore, a critical period with regard to achieving the national targets for 2030 as set out in the *Climate Action Plan*. Having regard to the time periods involved in delivering this type of infrastructure, delays to the provision of an adequate development plan strategy undermines the ability of the Development Plan to contribute to realising overall national targets during the Plan period.

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<sup>2</sup> But slightly amended the text in Section 3.5.5 to omit reference to a planned Anaerobic Digestion plant that is still undergoing the planning process for a site in Portlaoise

Turning to the provisions of policy CM RE 1 of the adopted Plan, the Office notes the contents of the section 31(AM)(6) letter of the Chief Executive.

The CE recommended an amendment to policy CE RE 1 to read:

*'Prepare a Renewable Energy Strategy (RES) for County Laois and commencement of the variation to the County Development Plan within 1 year of adoption of the plan. Once adopted tThis will be by way of a variation to the Laois County Development Plan.'*

The elected members accepted the CE's recommendation and adopted the Development Plan with the above amended policy CM RE 1.

Policy CM RE 1 does not, however, include a specific target for the Laois County Development Plan as required by the SPPR.

Furthermore, the targets required under item (2) of the SPPR of the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)* are necessary for the planning authority to demonstrate detailed compliance with that item in any proposal to introduce mandatory setback distances under item (3) as set out in section 1.1 above.

In summary, notwithstanding the commitment in Section 3.5.5 of the Development Plan and/ or policy CM RE 1, the Development Plan is not consistent with the SPPR in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)* and requires further steps to be taken to ensure consistency with the SPPR and to deliver on the *Climate Action Plan 2021* in a timely manner.

### **1.3 Land use zoning amendments - MA Recommendation 3**

MA Recommendation 3 of the Office's submission to the material alterations to the draft Plan required the planning authority to omit a number of zoning amendments from the draft Plan.

MA Recommendation 3 – Zoning Amendments stated the following:

*'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.'*

The CE's recommendations were to make the Plan without the above nine zoning amendments.

The Office has assessed each of the zoning amendments and considered the reasons provided by the elected members for rejecting the CE's recommendation in each case.

The Strategic Environmental Assessment of relevant proposed material alterations (September 2021) to the draft Plan states the following in the detailed evaluation (section 8.7) of the zoning amendments:

*'These Proposed Alterations would not be consistent with established population targets and/or the proper planning and sustainable development of the County. As a result they would present additional, unnecessary and potentially significant adverse effects on various environmental components, including soil, water, non-designated habitats and species, air and climatic factors and material assets. Much of the zoning provided for by these amendments is considered to be premature in the context of current population targets...*

*...Where such alterations are further from the centre of settlements, potentially significant unnecessary adverse effects would be likely to include:*

- *Difficulty in providing adequate and appropriate waste water treatment as a result of zoning outside of established built development envelopes of settlements*
- *Adverse impacts upon the economic viability of providing for public assets and infrastructure*
- *Adverse impacts upon carbon emission reduction targets in line with local, national and European environmental objectives*
- *Conflicts between transport emissions, including those from cars, and air quality*
- *Conflicts between increased frequency of noise emissions and protection of sensitive receptors*
- *Potential effects on human health as a result of potential interactions with environmental vectors.*<sup>3</sup>

### **Zoning amendments 8, 9, 87, 91 & 98**

In respect of zoning amendments 8, 9, 87 (Portlaoise), 91 (Abbeyleix) and 98 (Timahoe), the Office accepts the reasons provided by the elected members in support of the zoning amendments and considers that these changes would not unduly impact on the overall Core Strategy, or the compact and sequential growth of the aforementioned settlements.

### **Zoning Amendment 85**

Zoning amendment 85 (Portlaoise) amended the zoning in the draft Plan from unzoned (whitelands) to Residential 2 - new proposed residential. The land, comprising c.1.62 ha, fronts the N77 and is approximately 500 metres from the motorway junction to the south of Portlaoise.

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<sup>3</sup> Strategic Environmental Assessment of relevant material alterations (page 105)

In respect of this amendment, the elected members provided the following reasons in the notice letter for rejecting the CE's recommendation to not zone the land to Residential 2:

1. *Proximity to the town centre.*
2. *Very little houses on the Abbeyleix Road.*
3. *Site is serviced and accessible onto the Abbeyleix Road.'*

The Office considers that the above reasons do not address the substantive issue in the recommendation concerning this amendment, which was in respect of the peripheral location of the land and inconsistency with NPO 3c and RPO 3.2 in relation to compact growth.

The subject land is removed from the main residential areas of the town and is outside the CSO settlement boundary. The immediately surrounding land is largely undeveloped with some ribbon development further north inside the CSO settlement boundary. Furthermore, the land is not in immediate proximity to the town centre as it is approximately 1.1 km from the edge of the town centre zoning at its closest point.

The fact that there are very few houses on the Abbeyleix Road (N77) does not provide justification for zoning the land in the manner proposed which would leave a gap in the residentially zoned land between this land and zoned land further north.

In respect of services, the CE's report (November 2021) on the material alteration states '*...In relation to Water supply - Development can be accommodated but would likely require infrastructure upgrades to accommodate the full growth projection and this is subject to funding from IW<sup>4</sup>.*'

The zoning is not required to meet the Core Strategy's housing allocation of 1,725 housing units for Portlaoise over the plan period. The Core Strategy Table indicates that lands zoned for mixed use and infill / brownfield land have the potential to accommodate 1,287 housing units. The draft Plan also provided c.54 ha of total land for residential uses of which 17 ha are greenfield<sup>5</sup> (excluding the six zoning

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<sup>4</sup> P36

<sup>5</sup> Revised Core Strategy Table in CE's Report on the material alteration submissions (page 50)

amendments included when the Plan was adopted). Zoning amendments 8, 85, 86, 87 and 89 add a further 13 ha of residential land<sup>6</sup> and increase the amount of greenfield zoned land by 76% from 17 ha to 30 ha.

While the Office considers that zoning amendments 8 and 87 are reasonable having regard to their location and characteristics, zoning amendments 85, 86 and 89 are located at the periphery of the built up area, remote from the town centre and train station. These amendments combined increase the amount of greenfield zoned land by 48% from 17 ha to 25 ha.

The extent of this greenfield zoned land is such that it risks significantly reducing the proportion of housing that complies with the requirement for compact growth under NPO 3c and RPO 3.2 (at least 30% of all new homes within the existing footprint of settlement).

Zoning amendment 85 also leapfrogs beyond the existing Residential 1 and 2 zoned land at the southern edge of Portlaoise to land outside the CSO settlement boundary. The zoning amendment is, therefore, inconsistent with the requirements for compact growth in NPO 3c and RPO 3.2, and the sequential approach to development having regard to section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

### **Zoning Amendment 86**

Zoning amendment 86 (Portlaoise) amended the zoning in the draft Plan from Transport & Utilities to Residential 2 - new proposed residential. The land, comprises c.1.36 ha. The existing wastewater treatment for Portlaoise is located immediately to the east of the zoned land.

In respect of this amendment, the following reasons were provided in the notice letter for the Elected Members rejecting the CE's recommendation to not zone the land to Residential 2:

1. *'Site next to existing development at Garden Village.*
2. *Serviced and available for development.*
3. *Need for houses within this area.'*

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<sup>6</sup> Zoning objective – Residential 2 New Proposed Residential



The Office considers that the reasons provided by the Elected Members in support of zoning amendment 86 do not address the substantive issue in the recommendation concerning this amendment, which was in respect of the peripheral location of the land and inconsistency with NPO 3c and RPO 3.2 in relation to compact growth.

While the Office acknowledges that the land adjoins the existing Garden Village estate, it is removed from the town centre and is almost 2 km from the edge of the town centre zoning. The proximity to existing development is not, in itself, an exclusive basis upon which to zone land that would otherwise not be consistent with national or regional policy, or indeed with the Core Strategy of the Plan.

In respect of services, the CE's report on the material alteration submissions states '*...In relation to Water supply - Development can be accommodated but would likely require infrastructure upgrades to accommodate the full growth projection and this is subject to funding from IW*<sup>7</sup>.'

In relation to the need for houses, the Office accepts that the Core Strategy in the Development Plan identifies both the relevant housing supply target and consequent requirement for zoned land consistent with national and regional policy. Additional Residential 2 land is not, however, required to accommodate the level of growth set out in the Core Strategy for Portlaoise over the plan period.

Significantly, the subject land was rezoned from Transport & Utilities to Residential 2. The purpose of the Transport & Utilities is to provide for and preserve land for the provision of services such as electricity, telecommunications, water and wastewater. The Office notes that the adopted Portlaoise Local Area Plan 2018 – 2024 (LAP) contains policies<sup>8</sup> supporting the upgrading of wastewater treatment infrastructure serving the town.

No assessment has been provided in relation to the potential implications of this rezoning on the need for future upgrades to the wastewater treatment infrastructure serving the town, which adjoins this land.

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<sup>7</sup> P36

<sup>8</sup> Policies KI O4 and KI P3 of the adopted Portlaoise Local Area Plan 2018 - 2024

As outlined in respect of zoning amendment 85 above, additional Residential 2 land is not required to meet the Core Strategy's housing allocation for Portlaoise over the plan period.

Furthermore, the land is removed from the town centre and is almost 2 km from the edge of the town centre zoning. The zoning amendment is, therefore, inconsistent with the requirements for compact growth in NPO 3c and RPO 3.2, and the sequential approach to development having regard to section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

### **Zoning Amendment 89**

Zoning amendment 89 (Portlaoise) amended the zoning in the draft Plan from Strategic Reserve to Residential 2 - new proposed residential. The land, comprising c.5.17 ha, adjoins a proposed ring road at the northern periphery of the town.

In respect of this amendment, the elected members provided the following reasons in the notice letter for rejecting the CE's recommendation to not zone the land to Residential 2:

1. *'Honour our commitments under Housing for All to provide a choice of housing in Portlaoise.*
2. *Can deliver a number of units for housing purposes.*
3. *Need for supply of private housing to counterbalance the social housing being developed.*
4. *Local authority were supportive of this development at the time of the SHD development.*
5. *Irish Water has confirmed that a number of units can be developed here with investment.*
6. *There has been €1.2 million invested in the roads infrastructure from Dublin Road to Colliers Lane to these lands.'*

The Office considers that the reasons provided by the elected members in support of zoning amendment 89 do not address the substantive issue in the recommendation concerning this amendment, which was in respect of the peripheral location of the land and inconsistency with NPO 3c and RPO 3.2 in relation to compact growth.

The Office agrees that there is a need to provide for a choice of housing in Portlaoise. Indeed, the Housing Strategy and Housing Need Demand Assessment (Appendix 3 of the Development Plan) contains information on forecast household size cohort changes over the plan period which supports the need for diversity and choice in housing including apartments, smaller houses and larger houses<sup>9</sup>.

The Office notes that the land was proposed to be zoned Strategic Reserve in the draft Plan and while it may form part of the future expansion of Portlaoise in a manner consistent with the provision of adequate social and physical infrastructure, additional Residential 2 land is not required to meet the Core Strategy's housing allocation for Portlaoise over the plan period. The Plan already zones numerous sites closer to the town centre to Residential 2 which can provide for private housing and social and affordable housing in accordance with Part V of the Planning and Development Act, 2000 (as amended).

The Office notes that a planning application for 99 residential units on part of this land was submitted to the planning authority on 9 July 2021 with a decision pending at the time of preparing this notice letter. There is no record of a permitted Strategic Housing Development (SHD) application on these lands.

The land in question is remote (approximately 2.5 km) from the town centre and the train station, and the rezoning is not required to meet the housing allocation for Portlaoise in the Core Strategy over the plan period. Furthermore, the zoning amendment leapfrogs to a remote location at the edge of the settlement and outside the CSO settlement boundary. The zoning amendment is, therefore, inconsistent with the requirements for compact growth in NPO 3c and RPO 3.2, and the sequential approach to development having regard to section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

### **Zoning amendment 92**

Zoning amendment 92 (Stradbally) amended the zoning in the draft Plan from not zoned to Residential 2 – New Proposed Residential. The land, comprises c.7.16 ha.

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<sup>9</sup> Section 6.3 – Household Size Cohort (pages 90 and 91)

In respect of zoning amendment 92, the elected members provided the following reasons in the notice letter for rejecting the CE's recommendation to not zone the land to Residential 2:

1. 'Need for housing both affordable and private housing in Stradbally.
2. Site is serviced.'

The Office considers that the reasons provided by the elected members in support of zoning amendment 92 do not address the substantive issue in the recommendation concerning this amendment, which was in respect of the peripheral location of the land and inconsistency with NPO 3c and RPO 3.2 in relation to compact growth.

The housing supply target for Stradbally for the plan period is 80 housing units. The Core Strategy table indicates the potential for 43 housing units on mixed use and brownfield / infill zoned lands. In addition to this provision, the zoning amendment almost quadruples the amount of greenfield zoned land from 2.5 ha to 9.66 ha, which is far in excess of what is required to meet the housing supply target for Stradbally.

There is already land zoned Residential 2 in three locations all of which are closer to the town centre than the subject land. There is also land zoned for Strategic Reserve closer to the town centre which is sequentially preferable than the subject land.

The rezoning leapfrogs to the edge of the settlement to a location primarily outside the CSO settlement boundary. The zoning amendment is, therefore, inconsistent with the requirements for compact growth in NPO 3c and RPO 3.2, and the sequential approach to development having regard to section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

#### **1.4 Rural Housing Policy - MA Recommendation 4**

The adopted material amendments deleted the rural housing policy (section 4.6) in the draft Plan including NPO 19, designations, rural area typologies, maps and local needs criteria, and inserted a new section 4.6 Open Countryside and Rural Housing including map 4.1 – Rural Area Designations with policy and criteria for three areas including areas under strong urban influence, stronger rural areas and structural

weak areas, largely the same as the previous Laois County Development Plan 2017-2023.

MA Recommendation 4 of the Office's submission on the material alterations to the draft Plan had required the planning authority to review the rural housing policy proposed at the material alterations stage to ensure that the evidence basis for the policy framework is consistent with national and regional policy.

The CE's report recommended that the plan revert to the original draft Plan (January 2021), stating that the rural housing policy had been evidence-based and prepared in accordance with the NPF and RSES. The CE also states he is of the opinion that the revised rural housing policy agreed by members on the 1<sup>st</sup> September 2021 does not reference the current NPF and RSES or climate action legislation and the need to transition to a low carbon society.

The elected members provided eight reasons for rejecting the CE's recommendation.

The Office is, however, in agreement with the recommendation of the Chief Executive, and considers that, as set out in its submission letter, *'...the allocation to the open countryside in the Core Strategy [of the draft Plan] is consistent with national and regional policy objectives seeking to manage the pressure for urban generated rural housing particularly in locations in proximity to larger towns.*

It is further noted that the adopted Plan contains outdated references such as to the National Spatial Strategy and does not reflect 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 rural housing policy does not reference Climate Action legislation or the need to transition to a low carbon economy.

Having regard to the current policy framework, however, on balance the Office does not consider that there are sufficient grounds to make a recommendation to the Minister to issue a draft Direction in respect of this matter.

## 1.5 Height Limit - MA Recommendation 5

MA Recommendation 5 of the Office's submission on the material alterations to the draft Plan required the planning authority to omit the policy – *'Developments shall be no more than 3 storey on greenfield sites'*.

MA Recommendation 5 – Height limit for greenfield sites stated:

*'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.'*

The CE's report on the material alterations submissions stated the following in respect of the policy on a 3-storey height limit:

*'...having regard to SPPR1 of the Guidelines, and NPO 13 of the NPF, without any evidence to demonstrate why there should be a blanket limitation of 3 storey restriction on greenfield sites, the Executive is of the opinion that the introduction is inconsistent with national policy and would undermine other objectives in the development plan that promotes compact growth and more efficient use of land.'*

The elected members provided the following reasons in the notice letter for rejecting the CE's recommendation:

1. *'3 storeys residential development inappropriate within the town of Portlaoise.*
2. *Concern regarding quality of life afforded to occupants of apartments in 3 storey buildings.*

3. *People do not want to live in apartments.*
4. *Implications of increased densities on the creation of sustainable communities.'*

While the Office recognises the concerns of elected members in terms of residential amenity and the creation of sustainable communities, no evidence has been provided to support the view that residential accommodation in buildings of more than 3-storeys provides an unacceptable level of amenity for residents, that people do not want to live in apartments, or that such development would adversely affect the community.

On the contrary, there are extensive examples of high quality apartment developments across the county in towns such as Portlaoise, Portarlinton and Graigecullen which exceed 3-storey in height but provide an excellent quality of life for residents and contribute positively to the quality of the built environment.

Furthermore, section 13 of the Plan contains principles for residential development and urban design policy objectives which any future planning applications would be assessed against in order to protect the amenity of both future residents and the existing community, and to provide high quality places.

This issue is also significant having regard to the importance of achieving compact growth and development at appropriate densities consistent with national and regional policy. In particular SPPR 1 of the *Urban Development and Building Heights Guidelines for Planning Authorities (2018)*, NPO 13 of the *National Planning Framework* which promotes the use of performance based criteria for building height, compact growth (NPO 3c), increased residential density and building heights (NPO 35) and diverse and integrated communities (NPO 4).

In the case of County Laois, the 3-storey height restriction has the potential to undermine the achievement of the recommended densities in Table 13.4 of the Plan for outer suburban/greenfield land in particular the upper range for Key Towns and Self-Sustaining Growth Towns / Self-Sustaining Towns. This is particularly important given that the three towns of Portlaoise, Portarlinton and Graigecullen are expected to provide approximately 60% of the county's housing growth for the plan period.

It is further noted that Section 6.3 of the Housing Strategy and Housing Need Demand Assessment (Appendix 3 of the Development Plan) contains information on household size cohort. It states the following:

*‘...As it can be seen, the bigger size households, including four-plus households, are forming approximately 49% of the total, while single- and two-person households form approximately 35% of the overall households...*

*The indication of anticipated households in each cohort shows that two-person households are expected to have 25% of the overall households followed by single-person households (23%). Comparing these outputs with Census 2016 indicate that the 4-person households are expected to have the greatest growth rate (34%), followed by single-person households (28%), and two person households (16%).*

*This indicates that a growing demand for apartments and smaller-size houses are expected, while the bigger size houses are still having a steady market in the County which by considering the dominant characteristics of the County is not unexpected...’ (Emphasis added)*

The above provides clear evidence of the need for smaller housing units and apartment development in the county.

The policy is contrary to SPPR 1 of the *Urban Development and Building Heights Guidelines for Planning Authorities* (2018) and NPO 13 of the NPF and would undermine other objectives in the development plan that promote compact growth and more efficient use of land and the identified need for smaller housing units in the Housing Strategy and Housing Needs Demand Assessment prepared by the planning authority.

## **2. Opinion of the Office and Reasons**

Having considered the adopted Development Plan, the Office also notes, under section 31 AM(7) of the Act, that the said Development Plan has not been made in a manner consistent with the recommendations of the Office.



Further, the Office does not accept that the reasons given for not implementing the Office's recommendations in the notice letter dated 1<sup>st</sup> February 2022 adequately justify the failure to implement those recommendations or explain how, notwithstanding that failure, the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans such as this Development Plan:

- The provisions of section 31AM(2) .
- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
  - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,
  - b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,

- c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
- d) the requirements of relevant acts of the European Union, in particular, those relating to—
  - (i) the Environmental Impact Assessment Directive,
  - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
  - (iii) the Habitats Directive, and
  - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those acts.

Accordingly, having considered the Development Plan in light of section 31AM(1), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the letter from the planning authority of the 1 February 2022 issued under section 31AM(6), the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office pursuant to Section 31AM (7).

The Development Plan as made is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically the SPPR contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)* due to the inclusion of a 1.5 km setback distance between wind turbines and residential / other land uses, and the absence of a target for renewable energy, and in particular wind energy production and the potential wind energy resource (in megawatts).

The Development Plan as made is also inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically the SPPR 1 contained in the *Urban Development and Building Height Guidelines (2018)* due to inclusion of a policy with a blanket numerical restriction on building height affecting greenfield land. This policy is also inconsistent with NPO 13 which promotes standards for building height based

on performance criteria, would undermine other objectives in the development plan that promote compact growth and more efficient use of land.

Furthermore, the adopted Development Plan includes material amendments to the draft Plan which zone additional residential land in excess of what is required for the settlements of Portlaoise and Stradbally as set out in the Core Strategy. These amendments also:

- a) encourage a pattern of development in particular locations which are inconsistent with national and regional policy objectives promoting compact growth (NPO 3c and RPO 3.2) and which fails to have regard to section 4.19 of the *Development Plans Guidelines for Planning Authorities (2007)* issued under Section 28 of the Act regarding the sequential approach, and
- b) zone land for development inconsistent with the evaluation of zoning amendments in the Strategic Environmental Assessment of the likely significant effects on the environment which is particularly relevant for land further from the centre of settlements.

Moreover, having considered the reasons given by the elected members as set out above, the Office remains of the view that provisions of the development plan as made are inconsistent with National Planning Objectives NPO 3(c) and NPO 13, Regional Policy Objective RPO 3.2, and the Section 28 *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*; *Urban Development and Building Height Guidelines (2018)*; and having regard to *Development Plans Guidelines for Planning Authorities (2007)*.

The Development Plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

The factors that the Office has taken into account in forming this opinion include:

- i. The Government's commitment in the Climate Action Plan 2021 to achieve up to 80% 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 the section 28 *Wind Energy Development Guidelines (2006)*.

- ii. The Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)* which state that the relevant planning authority shall carry out, inter alia the following:

*'...(2) 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*

*(3) Demonstrate detailed compliance with item number (2) above in any proposal by them to introduce or vary a mandatory setback distance or distances for wind turbines from specified land uses or classes of land use into their development plan or local area plan. Such a proposal shall be subject to environmental assessment requirements, for example under the SEA and Habitats Directives. It shall also be a material consideration in SEA, when taking into account likely significant effects on climatic factors, in addition to other factors such as landscape and air, if a mandatory setback or variation to a mandatory setback proposed by a planning authority in a development plan or local area plan would create a significant limitation or constraint on renewable energy projects, including wind turbines, within the administrative area of the plan.'*

- iii. The policy objectives in the adopted Plan, including climate mitigation objectives promoting wind farm development 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.
- iv. The Office's analysis of the implications of the separation distance contained in Section 6.1 of Appendix 5 – Wind Energy Strategy which concluded that it would not be possible to progress a wind energy project with a wind turbine in the vast majority of the county which would significantly limit or constrain renewable energy projects to the extent that is inconsistent with the requirement to demonstrate the contribution of County Laois to realising overall national targets on renewable energy and

climate change mitigation, and such that the policy objectives of the development plan including climate mitigation objectives promoting wind farm development 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 cannot be achieved having regard to the separation distances required by Section 6.1 of Appendix 5 – Wind Energy Strategy (See attachment to this letter.)

- v. The Specific Planning Policy Requirement 1 contained in the *Urban Development and Building Height Guidelines (2018)* which states:  
  
*'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 shall not provide for blanket numerical limitations on building height.'*
  
- vi. The sequential approach set out in section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)* which states:  
  
*'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)'*
  
- vii. Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
  
- viii. National Policy Objectives NPO 3(c), NPO 13 and Regional Policy Objective 3.2 which state:

**NPO 3(c)**

*Deliver at least 30% of all homes that are targets in settlements other than the five Cities and the suburbs, within existing built-up footprints.*

**NPO 13**

*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.*

**RPO 3.2**

*Local authorities, in their core strategies shall set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.*

- ix. The Core Strategy Table in the adopted Development Plan.
- x. The Chief Executive's reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.
- xi. The relevant requirements of section 10, section 12(18) and section 28 of the Act.
- xii. The Office's statutory obligations under the Act.

In light of the above, the Office is therefore of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

**3. Recommendation to the Minister**

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps

as to rectify the matters as set out in the draft direction to the planning authority accompanying this notice, i.e.

- a. Delete the setback distance of 1.5 km from section 6.1 – Buffer Zones which is contained in the Development Control Standards for wind farms in County Laois in section 6 of Appendix 5: Wind Energy Strategy of the adopted Development Plan.
- b. Take such steps as are required to identify, on an evidence-basis and using appropriate and meaningful metrics, the target which County Laois can contribute in delivering its share of overall Government targets on renewable energy and climate change mitigation over the plan period, and in particular wind energy production and the potential wind energy resource (in megawatts), and to amend the adopted Plan accordingly.
- c. Delete policy '*Developments shall be no more than 3 storey on greenfield sites*' from the adopted Development Plan.
- d. Reinstate the following zoning objectives to that of the draft Plan consistent with the recommendations of the Chief Executive' Report dated 17<sup>th</sup> November 2021.
  - (i) Zoning amendment 85 (Portlaoise) – reinstate the zoning status of the subject land to that of the draft Plan i.e. the subject land reverts to not zoned.
  - (ii) Zoning amendment 86 (Portlaoise) – reinstate the zoning of the subject land to that of the draft Plan i.e. the subject land reverts to Transport & Utilities
  - (iii) Zoning amendment 89 (Portlaoise) – reinstate the zoning of the subject land to that of the draft Plan i.e. the subject land reverts to Strategic Reserve
  - (iv) Zoning amendment 92 (Stradbally) – reinstate the zoning status of the subject land to that of the draft Plan i.e. the subject land reverts to not zoned.

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at [plans@opr.ie](mailto:plans@opr.ie).

Yours sincerely,

A handwritten signature in black ink that reads "Niall Cussen". The signature is written in a cursive style and is set against a light grey rectangular background.

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**Niall Cussen**

Planning Regulator

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