



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

18th May 2022

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

Re: Notice pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) - Laois County Development Plan 2021-2027

A chara,

I am writing to you pursuant to section 31AN(4) of the *Planning and Development Act 2000* (as amended) (the "Act") in the context of the Laois County Development Plan 2021-2027 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Laois County Council (the "Council") by your office on 07/03/2022, and
- b) the report of the Chief Executive of the Council dated 26/04/2022 on the submissions and observations received by the Council (the "Report").

I refer also to the submission made directly by the elected members of the Council to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. The Office received one submission containing the observations of three elected members, which is attached to this letter. The submission from the elected members requested the Office to review the submission from the owner of the land the subject of Zoning Amendment 89 (Portlaoise) and attached a copy of the landowner's

submission to the draft Direction. This Office has carefully taken into consideration the Report and the submission made directly to this Office.

Draft Direction

The draft Direction issued by your office contained four parts: Part 2(a) renewable energy targets; Part 2(b) wind energy set back distances; Part 2(c) building height restriction; Part 2(d) four individual zoning objective Material Amendments specified under (i), (ii), (iii) and (iv).

You will note that the Chief Executive's Report prepared in accordance with section 31(8) of the Act recommends the following:

Part 2(a) to amend the plan as per the draft Direction issued by the Minister, as drafted and without amendment;

Part 2(b) to not amend the Plan;

Part 2(c) to amend the plan as per the draft Direction issued by the Minister, as drafted and without amendment;

Part 2(d) to not amend the Plan.

The Chief Executive also considered, in detail, the submissions of all parties made under 31(7)(c) of the Act.

The Office now recommends, pursuant to section 31AN(4) of the Act that you issue the attached Direction, which includes a material amendment to the draft Direction. The Office has considered whether to exercise its discretion to appoint an inspector pursuant to section 31AN(4) of the Act but has decided not to do so as the Office considers there to be adequate information on which to make a recommendation, including the Report of the Chief Executive and the submissions made directly to the Office. The Office also does not consider that further consultation is required.

In forming this recommendation, this Office reiterates the submissions made to you in the Notice, which issued from this Office to your office on 21/02/2022 pursuant to section 31AM(8) of the Act. However, in terms of a response to the position set out by the Chief Executive, you might please note the following:

Part 2(a)

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(a) of the draft Direction is adequate as it would delete the setback distance of 1.5km 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, which is contrary to the Specific Planning Policy Requirement (SPPR) in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part 2 (a).

Part 2(b)

In respect of Part 2(b) of the draft Direction, the Chief Executive's recommendation is to not amend the Plan as the Chief Executive's opinion is that '*...it includes the necessary evidence and provision within the plan, that commits to the variation to the County Development Plan, within 1 year of adoption of the plan*'. This is consistent with Objective CM RE 1 of the adopted Plan which states:

CM RE 1 – 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 this will be by way of a variation to the Laois County Development Plan.

While the Office acknowledges the emphasis placed on climate action in the Plan which includes policy objectives promoting renewable energy development including from wind energy, the Office considers that the inclusion of information on wind energy outputs from completed and permitted wind and solar farm development at section 3.5.5 of the Plan is not consistent with part (2) of the SPPR contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)* which requires 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);”

The Office acknowledges the intent to prepare a Renewable Energy Strategy and initiate a variation of the Plan within a specific timeframe and accepts the Chief Executive’s reassurance that procurement for the necessary resources to complete the strategy has commenced.

In the context in which the separation distance will be removed from the Plan consistent with the Chief Executive’s recommendation under Part 2(a), the Office accepts that the preparation of a Renewable Energy Strategy would provide the opportunity for an evidence-based approach to the requirement set out in the draft Direction within a reasonable time period.

However, the commitment to prepare a Renewable Energy Strategy and to vary the Plan does not specify the inclusion of renewable energy targets, beyond completed and permitted development, arising from the Renewable Energy Strategy, and is therefore not consistent with the SPPR.

Having regard to the above, the Office considers that an amendment should be made to part 2 (b) of the draft Direction to require the planning authority, as part of the Renewable Energy Strategy and any variation to the Plan.

The amendment above would be to give effect to the requirement in the draft Direction to identify in an evidence-based manner, 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).

It is recommended, therefore, that an amendment is made to part 2 (b) of the draft Direction to provide for the requirements of the draft Direction through an amendment to Objective CM RE 1 of the adopted Plan to state (amended text in red):

CM RE 1 – Prepare a Renewable Energy Strategy (RES) for County Laois, including to identify 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 commencement of the variation to the County Development Plan within 1 year of adoption of the plan. Once adopted this will be by way of a variation to the Laois County Development Plan.

Part 2(c)

The Office is satisfied that the Chief Executive's recommendation in respect of part 2(c) of the draft Direction is adequate as it would delete the policy requiring that *'Developments shall be no more than 3 storey on greenfield sites'* from the adopted Development Plan, such policy being contrary to the SPPR 1 in the *Urban Development and Building Height Guidelines (2018)*.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part 2 (c).

Part 2(d)

In relation to Zoning Amendments 85 (Portlaoise), 86 (Portlaoise), 89 (Portlaoise), and 92 (Stradbally), the Chief Executive's recommendation is not to amend the Plan to give effect to the draft Direction.

The Office notes that, as set out in the submissions made to you in the Notice issued to you by this office on 21/02/2022, the Chief Executive's previous recommendation to elected members (Chief Executive's Report on the Proposed Material Amendments to the Draft Plan, November 2021) was to make the Plan without these zoning amendments.

The consideration below will address Zoning Amendments 85, 86 and 92 together, before turning to deal with Zoning Amendment 89 (Portlaoise).

The Report sets out the Chief Executive's rationale for the recommendation on the basis of local housing supply, affordability, demographics and economic factors. It is stated that:

Taking all of the above factors into account and the impact that they will have on the future demand and supply of housing in County Laois, it is considered prudent to revert the zoning of the 4 no. sites back to that proposed in the Adopted Plan, which collectively equates to c. 15 hectares of land that could deliver an additional 400 units...'

The Office is not, however, satisfied that this rationale is sufficiently specific to address, in an evidence-based manner, the reasons set out in the draft Direction.

Firstly, the Report does not address how the additional 400 units are consistent with the core strategy, which sets out the population and housing supply targets for individual settlements within the county over the plan period. In this respect, the Report does not address Reason III (b) of the draft Direction which states:

The Development Plan as made includes material amendments to the draft Plan including:

Land zoned for residential development in excess of that needed to meet the Core Strategy housing supply targets for Portlaoise and Stradbally in the adopted Plan, and which would further undermine the achievement of the brownfield development targets in the Core Strategy Table.

In respect of Zoning Amendment 85 (Portlaoise) and Zoning Amendment 92 (Stradbally) the Report also does not provide any site specific rationale to support the zoning of the lands, referring only to the site area, potential housing yield, and the fact that *'development can be accommodated but it is likely that this would require infrastructure upgrades to accommodate the full growth projection and this is subject to funding from Irish Water.'*

Zoning these lands would lead to leapfrogging of development into 'whiteland' outside the CSO settlement boundaries, and would not contribute to compact growth and sequential development contrary to national and regional policy objectives NPO 3c and RPO 3.2 and having regard to Section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

In respect of Zoning Amendment 86 (Portlaoise), the Report also refers to the above three factors and acknowledges that the bulk of the land is outside the CSO boundary, but states that it is contiguous with the Garden Village Housing Development on the Mountmellick Road.

However, Zoning Amendment 86 extends the residential zoning eastwards into an area of open countryside beyond the built up footprint established by Garden Village and Rossvale housing estates and encroaches into the sewerage treatment plant buffer.

The zoning of this land would also expand the town's built up footprint at a peripheral location outside the CSO settlement boundary contrary to national and regional policy objectives NPO 3c and RPO 3.2 and having regard to Section 4.19 of *Development Plans Guidelines for Planning Authorities (2007)*.

The Office does not consider, therefore, that the Report provides sufficient basis to materially amend the recommendation in relation to Zoning Amendments 85, 86 and 92 in the context of Reason III (a) of the draft Direction which refers to the location of the lands in peripheral locations remote from existing settlements, inconsistent with the requirement for compact growth and the sequential approach to development.

In relation to Zoning Amendment 89, the Office has given careful consideration to the detailed submission of elected members in respect of the Residential 2 zoning objective on the subject lands.

The submission states that these lands have been zoned for residential development since 2006 and are part of a larger land holding together with the lands to the north (zoned Residential 2). A masterplan has been prepared by the developer for the extended land holding.

Amongst other arguments in favour of the zoning objective, the submission references the preparation of the masterplan; proximity to an established neighbourhood centre (Kilminchy Avenue) and St. Marys CBS school; adjoining proposed and established housing on lands to the north, south and west, and Irish Water Confirmations of Feasibility for residential development and the capacity to serve the site within the plan period.

The Office has also given consideration to the submissions summarised in the Chief Executive's Report in support of the draft Direction as it relates to Zoning Amendment 89 on the grounds of traffic congestion, extent of existing housing in the area, lack of infrastructure capacity, and flooding.

Notwithstanding that the lands are on the periphery of Portlaoise outside the CSO settlement boundary and would not contribute to compact growth, on balance the Office considers that retaining the Residential 2 zoning is acceptable and that it is not required to include the lands in a direction under section 31 of the Act having regard to the following:

- the submission to this Office from the elected members;
- the submissions made to the Council;
- the zoning history of the land;
- the site's proximity to a neighbourhood centre and services such as schools;
- the masterplan for the larger landholding included with planning application ref. 21/496 which provides for the development of the overall landholding in phases;
- the capacity to service the site within the plan period; and
- the Strategic Flood Risk Assessment which did not identify the lands as being within flood zone A or B.

Having regard to the above, the Office considers that there is no basis to materially amend the recommendation of this Office in respect of part 2(d) (i), (ii) and (iv), but recommends that the Direction is issued without part 2 (d) (iii):

- (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.

In light of the deletion of part 2 (d) (iii), and in order for the numbering in the draft direction to flow sequentially, part 2 (d) (iv) has now become part 2 (d) (iii) in the attached draft direction.

Recommendation

Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction with the aforementioned amendments.

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.

Yours sincerely,



Niall Cussen
Planning Regulator



ENC Draft Direction, Submissions from elected members dated 31st March 2022.

DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

LAOIS COUNTY DEVELOPMENT PLAN 2021-2027

“Development Plan” means the Laois County Development Plan 2021-2027

“Planning Authority” means Laois County Council

WHEREAS the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended), other than the power to prosecute an offence, have been delegated to the Minister of State at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended) ("the Act"), and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AN(4) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Laois County Development Plan 2021-2027) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps:
 - 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. Amend Objective CM RE 1 of the adopted Development Plan to state (amended text in red):

CM RE 1 – Prepare a Renewable Energy Strategy (RES) for County Laois, including to identify 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 commencement of the variation to the County Development Plan within 1 year of adoption of the plan. Once adopted this will be by way of a variation to the Laois County Development Plan.

- 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:

- (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 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.

STATEMENT OF REASONS

- I. The Office of the Planning Regulator is of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.

- II. The Laois County Development Plan 2021 – 2027 as made is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically items 2 and 3 of the Specific Planning Policy Requirement contained in the *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (2017)*, and the requirement for the planning authority to comply with the aforementioned Specific Planning Policy Requirements under section 28(1C) and 12(18) of the Act. The Development Plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

- III. The Laois County Development Plan 2021 – 2027 as made is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically Specific Planning Policy Requirement 1 contained in the *Urban Development and Building Height Guidelines (2018)*, and the requirement for the planning authority to comply with the aforementioned Specific Planning Policy Requirements under section 28(1C) and 12(18) of the Act. The Development Plan as made therefore fails to set out an overall strategy for the proper planning and sustainable development of the area.

- IV. The Development Plan as made includes material amendments to the draft Plan, that are inconsistent with the evaluation of the Strategic Environmental Assessment and which individually and cumulatively are not consistent with the Core Strategy, national and regional planning

policy, and the proper planning and sustainable development of the area, including:

- a. Land zoned for residential development located in peripheral locations remote from the existing settlement, 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).
 - b. Land zoned for residential development in excess of that needed to meet the Core Strategy housing supply targets for Portlaoise and Stradbally in the adopted Development Plan, and which would further undermine the achievement of the brownfield development targets in the Core Strategy Table.
- V. The Chief Executive of the Planning Authority has prepared a report dated 26th April 2022 pursuant to Section 31(8) of the Act and has recommended that the draft Direction issued by the Minister is given effect, as drafted and without amendment in respect of part 2(a) and part 2(c).
- VI. The Chief Executive of the Planning Authority, in his report, has recommended that the draft Direction issued by the Minister is not given effect in respect of part 2(b) but the Office considers that an amendment to the Development Plan is required to give effect to part 2(b) of the draft Direction issued by the Minister.
- VII. The Chief Executive of the Planning Authority in his report has recommended that the draft Direction issued by the Minister is not given effect in respect of part 2(d) but the Office considers that there is no basis to materially amend the recommendation of this Office in respect of part 2(d) (i), (ii) and (iv), but recommends that the Direction is issued without part 2 (d) (iii) of the draft Direction issued by the

Minister. The numbering in this Direction has been reordered to reflect this deletion.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.