

Appendices

Appendix A - Ministerial Letter and Draft Direction



An Roinn Tithíochta, Pleanála,
Pobail agus Rialtais Áitiúil
Department of Housing, Planning,
Community and Local Government



Oifig an Aire
Office of the Minister

18 July 2017

For the Attention of:

Mr. John Mulholland, Chief Executive,
Laois County Council,
Áras an Chontae,
JFL Avenue,
Portlaoise,
Co. Laois.

**Section 31 of the Planning and Development Act 2000, as amended
by the Planning and Development (Amendment) Act 2010
Notice of Intent to Issue a Direction relating to the
Laois County Development Plan 2017-2023**

Dear Chief Executive,

I am writing to you in connection with the Laois County Development Plan 2017-2023 as adopted by the Council on 26 June 2017 and request that you bring this notice to the attention of the elected members of the County Council on or before Friday 21 July 2017.

TAKE NOTICE that I am considering issuing a direction pursuant to Section 31 of the Planning and Development Act 2000, as amended. A draft of the proposed direction is attached to this letter.

As appears therefrom, I have formed the provisional opinion (i) that the Planning Authority has ignored or not taken account of submissions made on my behalf in November 2016 and May 2017 in respect of the proposed Laois County Development Plan 2017-2023 and (ii) that the plan as adopted is not in compliance with the requirements of s.10(2)(n), s.10(5) and (5A), s.28 (1B)(b) and s.31(1)(c) of the Planning and Development Act 2000, as amended.

The reasons for the proposed direction are set out in the Statement of Reasons of the attached draft direction.

BACKGROUND

My Department wrote to your Council, under my direction as statutory consultee under the Planning Acts, in relation to the Draft Laois County Development Plan 2017-2023 on 17 November 2016 and 5 May 2017.

The submissions made by the Department on 17 November 2016 and 5 May 2017 on my behalf under Section 12 of the Planning and Development Act 2000 (as amended), highlighted the Department's concerns regarding the proposed policies and objectives in regard to wind energy, in particular in relation to Policy EN7, Section 6.1 of Appendix 5, and the proposed Wind Energy Map 1.6.5.

At a meeting of Laois County Council on 26 June 2017, the Laois County Development Plan 2017 – 2023 was adopted by the elected members, including policies EN7, Section 6.1 of Appendix 5 and proposed Wind Energy Map 1.6.5.

Accordingly I am issuing a draft Ministerial Direction under Section 31 of the Planning Act to direct Laois County Council, with regard to the now adopted development plan failing to adhere to statutory and policy requirements.

MEASURES PROPOSED UNDER THE DRAFT DIRECTION

In light of the foregoing, the Laois County Development Plan 2017-2023, as adopted, is to be amended as set out in the attached draft direction.

Please note that those parts of the County Development Plan which are the subject of this draft direction shall be taken not to have come into effect until the Section 31 procedure has been completed.

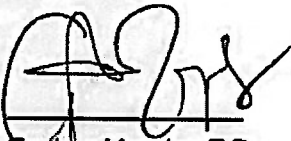
PROCEDURAL REQUIREMENTS

I would draw your attention to the public consultation obligations under Section 31 of the Planning and Development Act 2000, as amended by the Planning and Development (Amendment) Act 2010, and the initial requirement for you, as Chief Executive, under section 31(7) to publish notice of the draft direction no later than 2 weeks after receipt of this notice. I look forward to receipt of the report which has to be prepared by you on foot of this public consultation under Section 31(8), including on any

views of the elected members, to be furnished to me no later than 4 weeks after the public consultation process is completed, for my further consideration.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'E. Murphy', written over a horizontal line.

Eoghan Murphy, T.D.,

Minister for Housing, Planning, Community and Local Government

Copied to:

Cathaoirleach, Laois County Council, Áras an Chontae, JFL Avenue, Portlaoise, Co. Laois

Director, Eastern and Midland Regional Assembly, Ballymun Civil Centre, Ballymun, Dublin 9

**DIRECTION IN THE MATTER OF SECTION 31
OF THE PLANNING AND DEVELOPMENT ACT 2000
(AS AMENDED BY S.21 OF THE PLANNING AND DEVELOPMENT (AMENDMENT) ACT
2010)**

LAOIS COUNTY DEVELOPMENT PLAN DIRECTION 2017

“Development Plan” means the Laois County Development Plan 2017-2023

“The Minister” means the Minister for Housing, Planning, Community and Local Government

“The Planning Authority” means Laois County Council

WHEREAS the Minister, for the reasons set out in the Statement of Reasons hereto, is of the Opinion that

- (i) Laois County Council in making the Laois County Development Plan 2017-2023 has ignored or has not taken sufficient account of the submissions made by the Minister in November 2016 and in May 2017,

and

- (ii) the Laois County Development Plan 2017-2023 is not in compliance with the requirements of s.10(2)(n), s.10(5) and s.10(5A), s.28 (1B)(b) and s.31(1)(c) of the Planning and Development Act 2000 (as amended).

NOW, THEREFORE in exercise of the powers conferred on him by s.31 of the Planning and Development Act 2000 (as amended), the Minister hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Laois County Development Plan 2017-2023) Direction 2017.

(2) The County Council Laois County is hereby directed to take the following steps with regard to the Laois County Development Plan 2017-2023 (“the Development Plan”).

(i) The text in Policy EN7 is to be deleted as shown below:

~~Ensure a setback distance of 1.5 km of Wind turbines from schools, dwellings, community centres and all public roads in all areas open for consideration for wind farm development~~

(ii) The text in Section 6.1 of Appendix 5- Wind Energy Strategy is to be deleted as shown below:

~~‘Ensure a setback distance of 1.5 kms of wind turbines from schools, dwellings, community centres and all public roads in all areas open for consideration for windfarm development.’~~

(iii) The Map 1.6.5 – Wind Energy *as adopted* is to be removed. For ease of reference a copy of the said map is attached as Appendix 1 to this direction.

And

The Map 1.6.5 – Wind Energy as included in the Draft Laois County Development Plan 2017-2023 is to be included. For ease of reference a copy of the said map is attached as Appendix 2 to this direction.

STATEMENT OF REASONS

1. The Laois County Development Plan 2017 – 2023 is not consistent with relevant guidelines to planning authorities issued by me under Section 28 of the Planning Development & Act 2000 (as amended) specifically the Wind Energy Guidelines 2006 and insufficient grounds have been stated for such departures as required under Section 28(1B)(b) of the Planning & Development Act 2000 (as amended). The plan is therefore in breach of Section 31(1)(c) of the Planning & Development Act 2000 (as amended).

2. (a) The Laois County Development Plan 2017-2023 does not meet with the requirements of Section 10(2)(n) of the Planning and Development Act 2000 (as amended), as the effect of Policy EN7, Section 6.1 (Appendix 5) and revised wind energy map 1.6.5, is to severely undermine and negate practical measures to adapt to climate change and reduce reliance on fossil fuels and;

(b) The Environmental Report does not include information on *“any measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing”* Policy EN7, even though it will effectively run contrary to Policy EN1 and Aim 13 in the Development Plan, as adopted.

Consequently, the plan is not in compliance with the requirements of Sub sections 10(5) and (5A) of the Planning and Development Act 2000 (as amended) due to the fact that the environmental report which is required to accompany the plan (and without which the plan would be in breach of Directive 2001/42/EC) does not include information on mitigation to offset any significant adverse effects on the environment of implementing Policy EN7.

The plan is therefore in breach of Section 31(1)(c) of the Planning & Development Act 2000 (as amended).

3. The planning authority was advised in a submission made on 5th May 2017 under section 12 of the Planning & Development Act 2000 (as amended) of my opinion.

4. The inclusion of a wind turbine set-back stipulation in Policy EN7 and in Section 6.1 of Appendix 5, coupled with the requirements of Map 1.6.5 of the Laois County Development Plan 2017-2013, results in the introduction of an arbitrary and mandatory exclusion or setback distance of a minimum of 1.5 kilometres from schools, dwellings, community centres and all public roads in all areas open for

consideration for windfarm development and effectively designates the vast bulk of the County as not open for considering wind energy proposals.

These requirements are in clear breach of Sections 5.6 and 5.12 of the Wind Energy Guidelines 2006 in that they remove the capability for a case by case assessment of wind energy applications based on objective analysis of their impact on the specified property types. Furthermore in practical terms the setback requirement introduces a setback distance considerably in excess of the non-mandatory guidance setback referred to in the statutory guidelines.

5. The mandatory and arbitrary exclusion zones introduced by Policy EN7 and Section 6.1 of Appendix 5, coupled with the requirements of revised Map 1.6.5 are in breach of the planning policy guidance contained in the Wind Energy Guidelines 2006, as they do not maximise wind energy potential in the county and are in direct conflict with the requirements of Section 3.4 of the guidelines *'to secure the maximum potential from wind energy resources of the planning authority's area commensurate with supporting development that is consistent with the proper planning and sustainable development.'*

The effect of the mandatory setback requirement and the requirements of Map 1.6.5 is to significantly restrict the potential for wind energy development in the county which is contrary to national energy policy supporting development of renewable energy resources including wind energy infrastructure.

6. The planning authority has not demonstrated sufficient and evidentially based reasoning, relating to the nature and characteristics of Laois, for the above significant policy departures from the guidelines on wind energy and has therefore failed to comply with the provisions of Section 28(1) and Section 28(1B)(b) and Section 31(1)(c) of the Act.

7. This deficiency in the evidential basis of the policy is contrary to the guidelines above which are intended to ensure a consistency of approach throughout the country in the identification of suitable locations for wind energy development and the securing of the maximum potential from the wind energy resources of the planning authority's area and to underpin wider Government policy in relation to meeting binding international legal obligations with regard to renewable energy production and tackling the drivers of climate change.

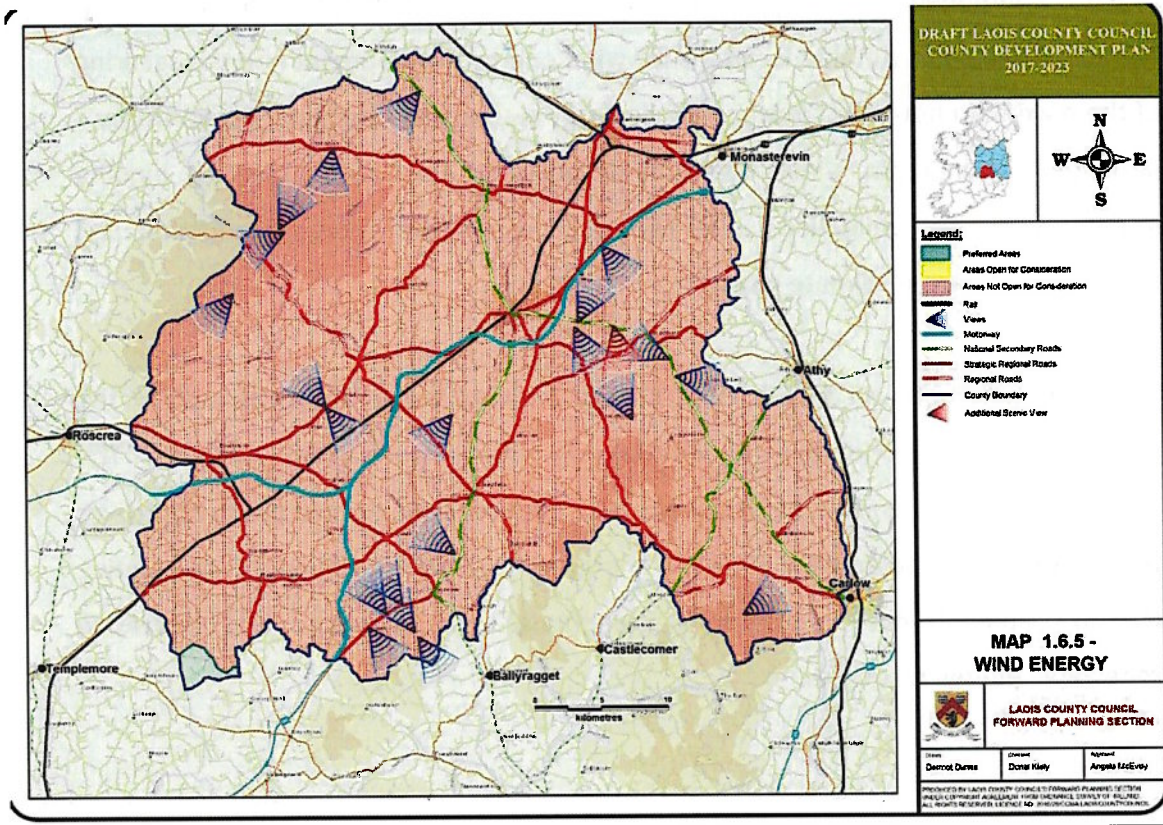
8. Such a requirement on future wind energy projects would seriously restrict the potential for the development of wind energy infrastructure in County Laois. The changes would be significantly in conflict with national and regional policy objectives to support the development of wind energy as a crucial component of meeting Ireland's commitments to reducing greenhouse gas emissions and increasing renewable energy resources.

GIVEN under my hand,

Minister for the Housing, Planning,
Community and Local Government

this day of July 2017.

Appendix 1 - Wind Energy Map- as in adopted Laois County Development Plan



Appendix 2 - Wind Energy map- Draft Laois County Development Plan

