
LAOIS COUNTY DEVELOPMENT PLAN 2017 - 2023

Chief Executive's Report Prepared Pursuant to a Notice of Intent to Issue a Ministerial Direction

Planning and Development (Laois County Development Plan
2017-2023) Direction 2017.

LAOIS COUNTY COUNCIL
Comhairle Chontae Laoise



***11th September 2017
Laois County Council
Comhairle Chontae Laoise***

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SECTION 1: Introduction and Background

Introduction

The Council initiated its review of the Laois County Development Plan 2011 – 2015 on 9th October 2015, with the publication of a notice to inform the general public of the Council's intention to prepare a new development plan for the county. The table below sets out the chronology of the preparation of the new Development Plan.

Stage 1 - Pre-Draft (Complete)	Comment
Notice of Review	9th October 2015
Stakeholder and Public Consultation	4 no. public information sessions were held at the following locations: Portlaoise, Portarlington, Rathdowney and Killeslin.
Chief Executive's Report on Consultation Submissions to Elected Members	January 2016
Members consider Chief Executives Report and give direction regarding preparation of the Draft Plan	March 2016
Proposed Draft Development Plan prepared and submitted to members for consideration	June 2016
Members consider draft plan and can accept or amend	Special meetings of County Council to consider the proposed Draft Development Plan held in July 2016.
Stage 2 Draft Plan (Complete)	Comment
Notice of Draft Plan	August 2016
Public consultation on draft plan	3 no. public information sessions were held at the following locations: Abbeyleix, Ballylynan and Castletown.
Chief Executive's Report on submissions/observations submitted to members	January 2017
Members consider Report and Draft Plan and can materially alter if required	March 2017
Stage 3 Material Alterations	
Notice of proposed material alterations	April 2017
CE Report on submissions/observations submitted to members	May 2017
Members consider report and proposed material alterations and can make the plan with or without the proposed alterations.	June 2017
Plan adopted	June 2017

There have been three separate stages of public consultation, each of which included the preparation of a Chief Executive's Report to summarise and respond to submissions and which was considered by the Elected Members of the Council. All of the Chief Executive's Reports relating to these stages of the Development Plan are available to view on the Council's website www.laois.ie.

The Laois County Development Plan 2017 – 2023 was adopted by the Elected Members on 26th June 2017.

Draft Ministerial Direction

A Draft Direction (attached at **Appendix A**) was issued by the Minister for the Environment, Community and Local Government on 18th July 2017, which effectively states 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).

The Draft Direction directs as follows:

“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.’*~~

- (ii) *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.”

The draft Direction includes a Statement of Reasons, which support the Direction:

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."

Purpose of this Report

Section 31 of the Act outlines that where the Minister issues a Draft Direction in relation to a Development Plan or Local Area Plan, the planning authority shall publish a notice to this effect and shall invite submissions from the public in respect of the Draft Direction and the Chief Executive shall prepare a Report to set out the following:

- a) Summarise the views of any person who made submissions or observations to the planning authority,
- b) Summarise the views of and recommendations (if any) made by the elected members of the planning authority,
- c) Summarise the views of and recommendations (if any) made by the regional assembly,
- d) Make recommendations in relation to the best manner in which to give effect to the draft direction.

This report addresses the requirements of the Act, in this respect.

SECTION 2 – Summary of Submissions or Observations Received

A public advertisement was placed in the Leinster Express and Laois Nationalist on Tuesday 1st August 2017. Submissions were invited for a two-week period, between 1st August 2017 and 15th August 2017.

A total of 15 No. submissions were received from members of the public during the prescribed public consultation period. A list of all the persons/bodies that made submissions on the Draft Ministerial Direction to the County Development Plan 2017-2023 during the prescribed consultation period is set out in the Table below.

No 1	Seamus Fingleton for on behalf of People over Wind
No 2	Paula Byrne
No 3	Seamus Delaney
No 4	Val Martin
No 5	Henry Fingleton
No 6	Dave Fingleton
No 7	Irish Wind Energy Association
No 8	Ray Conroy for an on behalf of Laois Wind Energy Awareness Group
No 9	Coillte
No 10	Galetech Energy Services
No 11	Fand Cooney
No 12	Bord na Mona
No 13	Renewable Energy Systems Ltd
No 14	Brookfield Renewable
No 15	Element Power Ireland Ltd

Each of the submissions is summarised below, in the order in which they were received. It should be noted that the below is a summarised version of each submission. Each submission is appended in full at **Appendix B**.

Sub. No	Group / individual	Summarised issues
1	Seamus Fingleton for and on behalf of People Over Wind	<p>Submission can be summarised as follows:</p> <p><u>Legal Basis</u></p> <p>Section 31 of the Act provides for a Ministerial Direction where the Minister considers that any draft development plan fails to set out an overall strategy for the proper planning and sustainable development of the area of a planning authority or otherwise significantly fails to comply with the Act. The submission outlines the belief that the wind energy strategy within the Draft Laois County Development Plan 2017 - 2023 clearly complies with proper and sustainable development of the area. It also complies with the Planning and Development Act 2000, as amended.</p> <p>The wind energy strategy within the Draft Plan does not comply with the 2016 wind energy guidelines or current wind energy policy, however; neither of these have been subjected to a Strategic Environmental Assessment and therefore do not have any legal standing under the Act.</p>

		<p>The Department has not undertaken an EIA or a SEA of the Laois County Development plan and the wind turbine set back distances so have no evidential basis for determining a lower set back.</p> <p>In addition, the Minister for Communications, Climate Action and Environment accepted that the current Wind Energy guidelines are not fit for purpose, however; the Minister still wants Laois County Council to change its County development plan to comply with these not fit for purpose guidelines.</p> <p><u>Setback Distances</u></p> <p>The Department commissioned RPS consultants to undertake a study on the setback distance for wind turbines as part of the revision of the 2006 guidelines. The report shows that an estimated setback distance of 1209m (i.e. 1.2 km) would be the minimum distance necessary to meet the 40dB noise limit proposed in the draft revision of the Wind Guidelines. People Over Wind believe and have been advised by experts in this area that a 40dB limit is still not enough to ensure there is no distress caused to people in their homes.</p> <p><u>Banteer Legal Action</u></p> <p>A number of families in Banteer, Co. Cork successfully sued a wind farm operator due to noise nuisance. By imposing a lower set back distance based on guideline that have been openly acknowledged as not fit for purpose, the Department would potentially be liable for any future legal action of this kind.</p> <p><u>Donegal variation to the County Development Plan</u></p> <p>In October 2016 the Minister issued a Draft Direction to Donegal County Council in respect of Variation No. 2 of the Donegal County Development Plan 2012-2018, which related to the county's Wind Energy Strategy. Following confirmation of the application of the Direction, a successful Judicial Review was brought, with the result that the Minister's Direction was quashed. Variation No. 2, which required a minimum setback distance of 10 times the tip height of a turbine from residential properties and other centres of human habitation, was thereafter implemented in full.</p> <p><u>Westmeath variation to County Development Plan</u></p> <p>In April 2017 Westmeath County Council adopted a variation to their County Development Plan and adopted setback distances of 10 – 20 times the height of the turbine generator.</p> <p>Based on the adopted Donegal and Westmeath variations, the ministerial direction should be revised to tweak the 1.5km absolute limit adopted by Laois County Council to be either 10 time turbine height as per Donegal or the tiered setback distance adopted by Westmeath County Council. Removal of this setback limit completely would mean that Laois is being</p>
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		treated inconsistently with other counties and without any reasons.
2	Ms. Paula Byrne	<p>Submission can be summarised as follows:</p> <p>Section 31 of the Act provides for a Ministerial Direction where the Minister considers that any draft development plan fails to set out an overall strategy for the proper planning and sustainable development of the area of a planning authority or otherwise significantly fails to comply with the Act. The submission outlines the belief that the wind energy strategy within the Draft Laois County Development Plan 2017 - 2023 clearly complies with proper and sustainable development of the area. It also complies with the Planning and Development Act 2000, as amended.</p> <p>The wind energy strategy within the Draft Plan does not comply with the 2016 wind energy guidelines or current wind energy policy, however; neither of these have been subjected to a Strategic Environmental Assessment and therefore do not have any legal standing under the Act.</p> <p>The Department has not undertaken an EIA or a SEA of the Laois County Development plan and the wind turbine set back distances so have no evidential basis for determining a lower set back.</p> <p>In addition, the Minister for Communications, Climate Action and Environment accepted that the current Wind Energy guidelines are not fit for purpose, however; the Minister still wants Laois County Council to change its County development plan to comply with these not fit for purpose guidelines.</p> <p>The Department commissioned RPS consultants to undertake a study on the setback distance for wind turbines as part of the revision of the 2006 guidelines. The report shows that an estimated setback distance of 1209m (i.e. 1.2 km) would be the minimum distance necessary to meet the 40dB noise limit proposed in the draft revision of the Wind Guidelines. The author of the submission been advised by experts in this area that a 40dB limit is still not enough to ensure there is no distress caused to people in their homes.</p> <p>A number of families in Banteer, Co. Cork successfully sued a wind farm operator due to noise nuisance. By imposing a lower set back distance based on guideline that have been openly acknowledged as not fit for purpose, the Department and possibly Laois Co. Co. would potentially be liable for any future legal action of this kind. Amendments to the EIA Directive, introduced in 2017, require the competent authority to prepare an Environmental Impact Assessment Report and to consider impacts on</p>

		<p>population and human health.</p> <p>A similar Ministerial Direction issued to Donegal Co. Co. was quashed, following Judicial Review. Donegal Co. Co. now requires a setback of distance of 10 times the turbine height; this is in effect a setback distance of 1.5km – 1.75km. Westmeath Co. Co. has also adopted a variation of their County Development Plan, implementing a tiered setback distance. In pursuing the current Draft Direction, the Minister is inconsistent by allowing different setbacks in different counties, putting the citizens of Laois at a disadvantage to those of other counties.</p> <p>The Minister is incorrect in stating that wind developments in Laois will make a significant impact on the reduction of CO₂, contributing to national mitigation policies. Between 2.6% - 4% of CO₂ emissions are saved through the deployment approximately 1,400 turbines. However, analysts have shown that the reduction in CO₂ emissions does not have a linear relationship with increased wind energy on the electricity grid, due to the fact that conventional electricity must always be available to back-up wind power. Also, the capacity factor of wind (the percentage of its theoretical maximum power output) is approximately 30%. The potential reduction of CO₂ from wind farms in Laois would make no meaningful difference to overall emissions.</p> <p>Ireland (and the EU) has not completed a SEA, as stated, nor a regulatory impact analysis as required before EU Directives are agreed.</p>
3	Mr. Seamus Delaney	<p>Submission can be summarised as follows:</p> <p>Section 31 of the Act provides for a Ministerial Direction where the Minister considers that any draft development plan fails to set out an overall strategy for the proper planning and sustainable development of the area of a planning authority or otherwise significantly fails to comply with the Act. The submission outlines the belief that the wind energy strategy within the Draft Laois County Development Plan 2017 - 2023 clearly complies with proper and sustainable development of the area. It also complies with the Planning and Development Act 2000, as amended.</p> <p>The wind energy strategy within the Draft Plan does not comply with the 2016 wind energy guidelines or current wind energy policy, however; neither of these have been subjected to a Strategic Environmental Assessment and therefore do not have any legal standing under the Act.</p> <p>The Department has not undertaken an EIA or a SEA of the Laois County Development plan and the wind turbine set back distances so have no evidential basis for determining a lower set back.</p> <p>In addition, the Minister for Communications, Climate Action and Environment accepted that the current Wind Energy guidelines are not fit</p>

		<p>for purpose, however; the Minister still wants Laois County Council to change its County development plan to comply with these not fit for purpose guidelines.</p> <p>The Department commissioned RPS consultants to undertake a study on the setback distance for wind turbines as part of the revision of the 2006 guidelines. The report shows that an estimated setback distance of 1209m (i.e. 1.2 km) would be the minimum distance necessary to meet the 40dB noise limit proposed in the draft revision of the Wind Guidelines. The author of the submission been advised by experts in this area that a 40dB limit is still not enough to ensure there is no distress caused to people in their homes.</p> <p>A number of families in Banteer, Co. Cork successfully sued a wind farm operator due to noise nuisance. By imposing a lower set back distance based on guideline that have been openly acknowledged as not fit for purpose, the Department and possibly Laois Co. Co. would potentially be liable for any future legal action of this kind. Amendments to the EIA Directive, introduced in 2017, require the competent authority to prepare an Environmental Impact Assessment Report and to consider impacts on population and human health.</p> <p>A similar Ministerial Direction issued to Donegal Co. Co. was quashed, following Judicial Review. Donegal Co. Co. now requires a setback of distance of 10 times the turbine height; this is in effect a setback distance of 1.5km – 1.75km. Westmeath Co. Co. has also adopted a variation of their County Development Plan, implementing a tiered setback distance. In pursuing the current Draft Direction, the Minister is inconsistent by allowing different setbacks in different counties, putting the citizens of Laois at a disadvantage to those of other counties.</p> <p>The Minister is incorrect in stating that wind developments in Laois will make a significant impact on the reduction of CO₂, contributing to national mitigation policies. Between 2.6% - 4% of CO₂ emissions are saved through the deployment approximately 1,400 turbines. However, analysts have shown that the reduction in CO₂ emissions does not have a linear relationship with increased wind energy on the electricity grid, due to the fact that conventional electricity must always be available to back-up wind power. Also, the capacity factor of wind (the percentage of its theoretical maximum power output) is approximately 30%. The potential reduction of CO₂ from wind farms in Laois would make no meaningful difference to overall emissions.</p> <p>Ireland (and the EU) has not completed a SEA, as stated, nor a regulatory impact analysis as required before EU Directives are agreed.</p>
4	Val Martin	<p>Submission can be summarised as follows:</p> <p>Public participation is a constitutional right under the Charter of</p>

		<p>Fundamental Human Rights and Article 10(3) of the Lisbon Treaty. The 2006 Wind Energy Guidelines were enacted without public participation and at a time when less was known about the effects of noise and the size of turbines was much smaller.</p> <p>CJEU ruling C-290/15 makes it clear that the enactment of guidelines which set the framework for future planning consent comes within the notion of plans or programmes under Directive 2001/42/EC and therefore no authority can enact such a measure without complying in full with the Directive. It follows that the 2006 Guidelines are unlawful and any new wind energy guidelines by the Irish State will be ultra vires and beyond their powers.</p> <p>Submission makes a recommendation, as follows:</p> <p>Reply to the Minister and them to explain where the power to interfere in the County Development Plan derives from, drawing attention to the SEA Directive, the EIA Directive, Directives 2003/4/EC and 2003/35/EC and the Aarhus Convention with Maastricht Recommendation.</p>
5	Henry Fingleton	<p>Submission can be summarised as follows:</p> <p>The Minister states that Laois County Councillors have ignored or not taken sufficient account of the submissions made by the Minister as part of the Laois County Development Plan 2017 – 2023 process. This is clearly incorrect as the CDP documents, including various Chief Executive’s Reports and the Minutes of Council meetings show that these submissions were taken into fully into account, ample evidence to support the decisions taken and therefore the CDP is in compliance with the requirements of the Act.</p> <p>The Minister claims that insufficient grounds have been stated for the departure from the 2006 Wind Energy Guidelines, however; written statements supporting the new CDP provide these reasons.</p> <p>The Minister states that the CDP does not meet with the requirements of Section 10(2)(n) of the Act, as the effect of Policy EN7, Section 6.1 of 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. This requirement was taken seriously in the CDP process. Laois has already facilitated significant commercial wind farms of c. 82 MW which would supply the energy consumption requirements of c. 114,000 households; well in excess of the population of County Laois.</p> <p>An evidence-based assessment of the county, to identify areas deemed to be suitable for wind farm development established that there are no such areas in County Laois. Any potential locations for wind farms would be</p>

		<p>sub-optimal at best, which would be contrary to sustainable development.</p> <p>Implementing Policy EN7 would not result in the significant adverse effects on the environment outlined by the Minister. It seems more likely that significant adverse effects will occur if it is not implemented.</p> <p>A holistic local authority renewable energy strategy is planned during the lifetime of the new Development Plan, thereby using a different mechanism to reduce reliance on fossil fuels.</p> <p>The Wind Energy Guidelines 2006 contain non-mandatory guidance, which was considered as part of the Development Plan process. The intention of the Elected Members in incorporating the revised Wind Energy Map, was to avoid centres of population where there is potential for conflict with such developments in the future. The SEAI wind atlas was used to identify areas deemed to be suitable, with the result that there are no such areas in Laois.</p> <p>The restriction on further sub-optimal development of wind farms should be taken in context of the fact that Laois has already facilitated significant wind farm projects as well plans to develop a holistic renewable energy strategy over the lifetime of the Development Plan.</p> <p>The Planning Authority had more than sufficient evidence to support the requirement for a 1.5km setback, with the intention of the Elected Members being to avoid centres of population where there is potential for conflict with such developments in the future.</p> <p>A supplementary submission from the Irish Doctors Environmental Association raised serious questions in relation to the adequacy of the Wind Energy Guidelines 2006 because there is no express reference to human health or quality of life and that this issue had to be addressed. The inadequacy of the Guidelines in this respect has been seen in Co. Cork, where Enercon Wind Farm Services Ltd (Ref. 2011 9955 P) admitted liability for nuisance, which caused seven families to move from their homes. These homes were within 1km of the wind farm.</p> <p>There is clearly no deficiency in the evidential basis of the County Development Plan. The Wind Energy Guidelines 2006 are non-mandatory and the Development Plan process has taken account of requirements for renewable energy production and tackling the drivers of climate change.</p> <p>The Wind Energy Guidelines have never been subject to SEA; a clear contradiction of recent Planning Circular PL 5/2017. The Minister is asked to clarify how it is the case that the new Guidelines will be subject to SEA, but the 2006 Guidelines were not.</p> <p>The Minister is requested to clarify what sufficient and evidence based</p>
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		reasoning was employed in directing a local authority to comply with any wind energy guidelines before they have been subject to the required SEA process.
6	Dave Fingleton	<p>Submission can be summarised as follows:</p> <p>The EU, through the Lisbon Treaty, enshrined the principle of public participation. It is outrageous that the present administration considers itself exempt from its provisions, in the manner in which this Ministerial Direction and associated interim guidelines ignored the fundamental rights of the public to participation in this decision-making related to the County Development Plan.</p> <p>Attention is drawn to the identification by the United Nations Economic Commission for Europe (UNECE) of the right to participate in matters relating to the environment: “Every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.” The EU not only ratified the UNECE Aarhus Convention, but introduced additional secondary legislation to give it effect.</p> <p>Under Article 226 EC, the Court of Justice may punish a Member State for non-compliance with an agreement concluded by the Community.</p> <p>The Laois County Development Plan 2017 – 2023 is a plan related to the environment, to which Article 7 of the Aarhus Convention applies, and there are mandatory legal requirements under both the Aarhus Convention and Community legal order with respect to the adoption of a County Development Plan, in terms of public participation.</p> <p>The National Renewable Energy Action Plan in Ireland has been the subject of a decision in International Law: Decision V/9g of the Meeting of the Parties on compliance with by the European Union with its obligations under the Convention that the EU had failed to comply with Articles 3 and 7 of the Convention by not having a proper regulatory framework and/or clear instructions to implement and enforce Article 7 of the Convention. Recommendations to address these failures have not been addressed by the EU to-date and there is currently a further draft Decision VI/8f, ahead of the upcoming Meeting of the Parties, which seeks to ensure compliance with the Convention.</p> <p>A request for information was made on 30th July 2015, in relation to wind energy modeling, related to both the National Renewable Energy Action Plan and the Wind Energy Guidelines 2006. The National Renewable Energy Action Plan called for between 4,094MW and 4,737MW of installed onshore wind energy capacity and it should have been worked out where these turbines would be located, their impacts, the mitigation</p>

		<p>measures and the reasonable alternatives. In essence, the completion of an SEA.</p> <p>Technical analysis released as part of the information request (appended to the submission) has shown that only some 2,000 MW of wind turbines 125m tall could be built in the available land space. Even then, the predicted noise impacts are known to cause major problems. Attention is drawn to the case where Enercon Wind Farm Services Ltd (Ref. 2011 9955 P) admitted liability in respect of noise impacts. Attention is also drawn to a case in Germany, where the Federal Environmental Agency has admitted to the issues relating to noise impacts arising from wind farm developments.</p> <p>The current Ministerial Direction is illegal, as it bypasses the public participation and turns it into a pro forma exercise i.e. the only decision making criterion is the requirements of the NREAP, which never went through public participation.</p> <p>Attention is drawn to the requirements of the Article 6 of the Convention, which requires early public participation, when all options are open. In other words, the Laois County Development Plan 2017-2023 and its Wind Energy Strategy has to consider the merits of why any wind energy strategy is needed at all, or whether any alternative options exist.</p> <p>The Compliance Committee has clarified that when issuing EIA/SEA decisions, the approach of competent authorities to not question a project/investment that was designated by a superior authority as being of national importance is out of step with the Convention.</p> <p>The Draft Ministerial Direction and interim guidelines have ignored the public participation to date and have instead a position of diktat based solely on compliance with the provisions of NREAP.</p>
7	Irish Wind Energy Association (IWEA)	<p>Submission can be summarised as follows:</p> <p>The Minister's intervention is supported. As can be seen in previous submissions during the CDP process, IWEA is extremely concerned about the decision of Laois County Council to effectively sterilise County Laois in respect of wind energy development.</p> <p>While the Minister's intervention is commended, attention is also drawn to serious concerns industry has regarding revised Wind Energy Map 1.6.5, proposed as an alternative to the final adopted map. This map will substantially reduce the areas available for wind energy development in the county. Laois County Council has also not provided any scientific evidence to change the map that was included in the previous Wind Energy Strategy as part of the 2011 – 2017 County Development Plan.</p>

		<p>There is a clear downgrading in the classification of areas previously considered “preferred” or “open for consideration” for wind energy development in the Revised Map. In relation to the Map, these proposals represent significant reclassifications that are presented without basis or evidence, for areas which have not experienced any landscape character changes, and for which the methodological approach to classifying these areas remains unchanged from the Previous Laois CDP and associated WES to the Current Laois CDP and associated WES.</p> <p>It appears that Laois County Council in drafting the Revised Map has effectively chosen to highlight areas above 225m contour line as unsuitable for wind farm development in the county despite there being no scientific evidence to support this in the relevant Landscape Character Assessment or in the wider Laois CDP.</p> <p>The effect of the Revised Map will be to reclassify the areas of land with the best wind resource in the county to “areas not for consideration” and to decrease the area of land in either an “open to consideration” or “preferred area” zoning by greater than 50% than what was zoned previously. Indeed, the one ‘preferred area’ remaining in the Revised Map, constitutes a minor 0.5% of the land area of the entire county and already hosts a six-wind turbine project.</p> <p>IWEA supports and respects the national energy development guidelines in place for wind farms. The Minister has said Laois County Council has ignored or has not taken sufficient account of the submissions made by him in November 2016 and in May 2017. Laois County Council in its decision also erred by either overlooking or ignoring the potential investment opportunities that could be harnessed for Laois by adopting a CDP that effectively rules out wind energy development. The submission provides an analysis of the potential income the Council could derive from a 10 turbine 3 MW wind farm in Laois.</p> <p>The Minister is requested to appoint an independent Planning Inspector to review the Laois CDP, the processes undertaken in arriving at its adoption and to ensure correct procedures in accordance with legislation and regulation has been adhered too.</p> <p>The CDP, as adopted, is hostile to wind energy development and unnecessarily so.</p> <p>If Laois County Council is permitted to adopt a CDP that restricts wind energy development without evidence-based reasoning and in contravention of national policy it will create a significant precedent and could have a detrimental impact on Ireland’s energy policy as other Local Authorities could similarly apply arbitrary rules to constrain wind energy development.</p>
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		If the Revised Map is to be adopted, it will be in contravention of the proper planning and sustainable development principle set out by the Department in Circular PL 5/2017.
8	Ray Conroy for and on behalf of Laois Wind Energy Awareness Group	<p>Submission can be summarised as follows:</p> <p>It is untrue for the Minister to suggest that Laois County Councillors have ignored or not taken sufficient account of the ministers opinions, when they democratically voted into existence the C.D.P for the county that they have been elected to represent. County Councillors devoted a huge amount of time and discussion to the minister's opinions, as well as to the opinions of all other bodies, on the content of the Laois County Development plan.</p> <p>The direction to remove the text in policy EN7 and to amend the map 1.6.5 is based on a false assumption of the Minister's behalf. The Minister's opinion was given due attention, but counter arguments by the opinions of others were found to be stronger and more in keeping with the purpose of the CDP.</p> <p>The proposed zoning of areas as 'suitable for wind farms' was based on GRS methodology, in conjunction with SEAI's Wind atlas, and the exercise came to the conclusion that there are no areas within Laois county that are eminently suitable for windfarm development. It would be going all principles of sustainable development to allow development of such intrusive infrastructure in any location other than one deemed as being eminently suitable for purpose.</p> <p>The current National Renewable Energy Action Plan is not underpinned by a legally required Strategic Environmental Assessment. This point has been admitted to by ministers on Dail record. A process has been initiated to commence an SEA but it is not complete and no government department can verify that it has even been started, and if ever completed, then there is no guarantee that it will validate the existing NREAP, or indeed if it ever could legally do so. The minister is requested to clarify this issue.</p> <p>The Wind Energy Guidelines 2006 remain under review and it is a matter of Dail record that these guidelines are inadequate and not for purpose. For the Minister to argue that such plans and guidelines, illegal and unfit for purpose, should supersede elected Councillors' decisions is bordering on criminal.</p> <p>The recent ruling by the ECJ on Wallonia, Belgium, which clearly states that a national plan (NREAP) , in the absence of the required SEA , cannot be used as an excuse to overrule any regions own plan for renewables' , was known to all Laois Councillors. This suggests that the Minister is ill-informed in his reasoning in his statement of reasons in alleging that the CDP would be in breach of Directive 2001/42/EC. The</p>

		<p>fact of the matter is that the ministers own plan, and the existing guidelines have been ruled on by the EJC as being in breach of the said Directive.</p> <p>The statement within the Draft Direction that that the Environmental Report does not include ‘any measures envisaged to prevent, reduce, and as fully as possible, offset any significant adverse effects on the environment of implementing ‘ policy EN7 does not make sense. Implementing said policy will have zero effect on the environment.</p> <p>The Minister’s submission dated 5th May 2017 sated that ‘National policy with regard to planning for wind energy does not allow for the setting of mandatory exclusion areas for wind farms in a specific distance in metres basis’. This is itself untrue, the Guidelines specify a setback in metres, and the proposed changes to the Guidelines also specify specific distances in metres. The fact that Laois has chosen 1.5KM as a distance is immaterial. The RPS report, commissioned by the Dept. of the Environment, clearly states that a distance of 1.2km is the minimum required distance necessary in order for any wind turbine to be in compliance with the proposed 40Db noise threshold mooted in the proposed changes. It is only correct that Laois County Councillors err on the side of caution and use 1.5km setback as a minimum safe distance.</p>
9	Coillte	<p>Submission can be summarised as follows:</p> <p>The Minister’s intervention is supported.</p> <p>Laois County Council has pursued a path at odds with previous submissions made by Coillte. The net effect of wind energy policies is a near blanket ban on wind farm developments in County Laois. It is unclear what objective scientific evidence was relied upon to inform the decision to adopt Appendix 5: Wind Energy Strategy and more particularly the Wind Energy Map Figure 1.6.5.</p> <p>Shortcomings associated with the adoption of the proposed map included in the Draft Section 31 Ministerial Direction are highlighted. It is highlighted that the proposed map will have the effect of removing all future development potential from upland areas, reducing Coillte’s future development potential of its forested lands for wind farm development by over 85% and severely limit Laois County Council’s ability to encourage inward investment, contribute to a low Carbon economy and offer communities an opportunity to participate in the benefits from future wind farm developments in the county. It is requested that the entire mapping process is revisited from first principles in order to ensure reliance on objective and evidence based criteria.</p> <p>The Minister is requested to appoint a Planning Inspector, in the absence of the above-recommended approach being adopted.</p>
10	Galetech Energy Services	<p>Submission can be summarised as follows:</p> <p>The Minister’s notification of a Draft Direction is welcomed.</p> <p>Galetech has significant outstanding reservations as to both the form and</p>

		<p>substance of the revised map included by the Minister in the Draft Direction and which he proposes to reinsert into the adopted County Development Plan. The revised map suffers from the same defects as that which it replaces – the lack of a proper evidence base upon which the wind energy policies for County Laois must be based. If the Minister proposes to change those areas of County Laois in respect of which wind development is possible from the position as it pertained in the previous Laois County Development Plan 2011-2017, then the Minister is obliged to do so only on the basis of objective factors.</p> <p>The process for the identification and designation of appropriate locations for wind energy development within the adopted Development Plan is flawed and devoid of any evidential basis. The process did not include any proper planning-based rationale for the designation of 'Preferred Areas', 'Areas Open for Consideration' and 'Areas Not for Consideration' in accordance with statutory guidelines and national policies. This absence of an evidential basis extends to both the 'Original Wind Energy Map 1.6.5' included within the Draft Plan (5th August 2016) and the 'Revised Wind Energy Map 1.6.5' (7th April 2017) included in the amended Draft Plan and subsequently incorporated in the adopted 2017-2023 Development Plan. Both the Chief Executive Officer and the Minister fully concur in respect of the 'Revised Wind Energy Map 1.6.5' and have consistently advised the members of Laois County Council against introducing policies which amount to a de facto unlawful ban on wind energy development within the county.</p> <p>There has been no substantive rationale provided by the Planning Authority, nor any analysis undertaken by the Minister, as to the evidential basis of the 'Original Wind Energy Map 1.6.5' included within the Draft Plan. The Draft Section 31 Direction includes a requirement for the reinsertion of the 'Original Wind Energy Map 1.6.5' into the adopted 2017-2023 Development Plan but this would amount to the replacement of one map drawn without a proper evidential basis with another map drawn without a proper evidential basis.</p> <p>The 'Original Wind Energy Map 1.6.5' appears to have picked the entirely arbitrary 225m contour as the point above which wind development will not be permitted and without considering (beyond baldly listing them) any of the factors required to be considered pursuant to the 2006 Guidelines. The submission notes that many of these locations (outside the Slieve Bloom mountains) were identified in the previous 2011-2017 Development Plan as exactly the locations which were appropriate for wind energy development. It is not possible or legal for such a sweeping reclassification to occur in any event, as it is clearly contrary to inter alia the statutory 2006 Guidelines and Section 15 of the Climate Change and Low Carbon Development Act 2015.</p> <p>Pinewood Wind Limited has developed proposals for a wind energy development on lands which were previously designated as 'Preferred Areas' and 'Areas Open for Consideration' in the Laois County Development Plan 2011-2017. A planning application for same is currently on appeal to An Bord Pleanála (PL11.248518). The reasons as to why this location was formerly designated by the Planning Authority as one of the</p>
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		<p>four most appropriate locations for wind energy development within County Laois was clearly expounded in the 2011-2017 Wind Energy Strategy (p.17), including: relatively low sensitivity to wind development; a viable wind regime; avoids most nature conservation designations; is sparsely populated; is in close proximity to a grid connection; and has an approved or built wind farm in the vicinity. This rationale fully conforms to the evidence-based reasoning required by the 2006 Guidelines and the SEAI's Methodology for Local Authority Renewable Energy Strategies 2013.</p> <p>However, in the 'Original Wind Energy Map 1.6.5', which the Minister is now proposing to reinsert into the 2017-2023 Development Plan, the designation of these lands has been completely reversed to 'Areas Not for Consideration'. It is accepted that there is no presumption in law that any land designated as appropriate for a specific use in any development plan shall remain so designated in any subsequent development plan. However, in doing so, the Planning Authority is obliged, at all times, to act in accordance with the law and to undertake a proper process, and to provide evidence-based justifications as to why the land-use policy has been altered. The adopted 2017-2023 Development Plan has been examined in considerable detail and there does not appear to be a proper substantive justification as to why the designation of the lands in respect of wind energy development has been reversed. Such a vague and arbitrary approach is entirely at odds with national policy and contrary to the criteria for designating appropriate locations for wind energy development provided at Chapter 3 of the 2006 Guidelines.</p> <p>Therefore, and having regard to the stated intention to reinsert the 'Original Wind Energy Map 1.6.5' into the 2017-2023 Development Plan, the Minister is reminded that he too is bound by the same legal obligations as apply to Laois County Council in respect of proper planning and sustainable development. Any map which the Minister seeks to reintroduce into the adopted Development Plan must also be fully underpinned by a proper evidential basis.</p> <p>Therefore, prior to seeking the reinsertion of the 'Original Wind Energy Map 1.6.5' (or any alternative) the Minister must ensure that the Planning Authority presents an analysis as to how it has implemented the 2006 Guidelines and how the criteria for the selection/non-selection of locations designated for wind energy have been applied. If such an analysis cannot be furnished, then the Minister is required, in our respectful submission, to direct the Planning Authority to recommence the entire process and prepare a wind energy strategy in accordance with law.</p>
11	Fand Cooney	<p>Submission can be summarised as follows:</p> <p>In the normal course of events, a challenge of an administrative decision must go through the courts, with the party required to satisfy the courts that they have a substantial grounds to challenge the decision and also assuming the risk of substantial legal costs. Section 31 of the Act has</p>

		<p>provided the Minister with unaccountable power, which essentially allows the Minister to issue directions which can overturn decisions based on opinions. Given such power, it is incumbent on the Minister and the officials advising him to exercise it only with great caution and full accountability for their actions.</p> <p>It appears that this draft Ministerial Direction and process is:</p> <ul style="list-style-type: none"> • being taken without proper authority as it is not founded in law given that no legally required SEA has ever been conducted; • improperly discriminatory in that it protects the interests of the Wind Developer lobby groups without affording equivalent protection to citizen health and amenity; • Based on an undesirable administrative practice of using Ministerial Direction: otherwise contrary to fair or sound administration. <p>The Wind Energy Guidelines 2006 are not fit for purpose and this was acknowledged by a senior Minister in the Dail in 2016. A supplementary submission from the Irish Doctors Environmental Association as part of the CDP process raised serious questions in relation to the adequacy of the Wind Energy Guidelines 2006.</p> <p>Attention is also drawn to a situation in Co. Cork, where a number of families who lived within 1km of a wind farm were forced to move out of their homes due to wind turbine noise-related nuisance (Case Ref.2011-9955-P). In this case, the wind farm operator, Enercon Wind Farm Services Ltd, admitted liability. The current Wind energy Guidelines would have done nothing to prevent this situation.</p> <p>SEAI commissioned RPS consultants to undertake a study on the setback distance for wind turbines as part of the revision of the 2006 guidelines. The report shows that an estimated setback distance of 1209m (i.e. 1.2 km) would be the minimum distance necessary to meet the 40dB noise limit proposed in the draft revision of the Wind Guidelines. However, this is likely to be insufficient protection according to an article published on 12th May 2017 by Alun Evans which concluded that <i>“All the available evidence 7 indicates that an important minority of local inhabitants is severely impacted by noise emitted by wind farms sited too close to their homes... There is an international consensus emerging for a separation distance of 2 km; indeed some countries are opting for 3 km and more. Furthermore, the appropriate, focused studies should be undertaken as soon as possible”</i></p> <p>The question is not whether Laois County Council considered comments by the Minister or complied with the PDA – they clearly did. This is evidenced by:</p> <ul style="list-style-type: none"> • The Chief Executive’s response to submission no 69 submission by Department of Housing, Planning, Community & Local Government, Stage 2 Consultations; • Laois County Council's evidential assessment of the county using
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		<p>SEAI's Wind Atlas to identify areas deemed eminently suitable for windfarm development established that "It is considered that there are no such areas in County Laois";</p> <ul style="list-style-type: none"> • Documented statements that Laois are developing other mechanisms to support renewable energy and climate change commitments; • The planning authority had plenty of evidence to support the requirement for a 1.5km setback in line with the precautionary principle. Since turbines are now expected to be in the height range of 150-175m, this is an equivalent set-back 10 x turbine height - equivalent set-back mechanisms have been adopted in Donegal and Westmeath CDP variations. <p>The question that needs to be asked is why the Minister is issuing this draft direction, given the evidence available concerning risks to health. This is a highly inappropriate use of the section 31 powers and probably amounts to maladministration.</p> <p>The Minister is requested to retract his draft Ministerial Direction against the Laois County Development Plan.</p>
12	Bord na Mona	<p>Submission can be summarised as follows:</p> <p>The Minister's intervention is supported.</p> <p>Policy EN7 is contrary to Policies EN1, EN3 and EN4 of the Development Plan and is also inconsistent with the Wind Energy Guidelines 2006 and a number of other national guidance documents, including the National Renewable Energy Action Plan, The Government's Strategy for Renewable Energy, The Government's White Paper on Energy Policy and The Government's National Mitigation Plan.</p> <p>Policy EN7 is also inconsistent with the Wind Energy Guidelines or the recent July 2017 interim guidance, in respect of setback distances, which require a visual amenity setback of 4 times the turbine height, subject to a mandatory minimum setback of 500m.</p> <p>It is agreed that Policy EN7 should be removed from the CDP, in order to ensure consistency with national policy.</p> <p>Bord na Mona acknowledges that the development of wind energy projects must afford protection to residential amenity in the surrounding areas. The most effective way to set setback distances is through the adoption of effective performance criteria. A prescriptive setback from sensitive receptors may not result in the desired effect as wind turbine technology is ever-evolving. Performance criterion provide a more objective and enduring guideline.</p> <p>Bord na Mona welcomes the requirement that revised Wind Energy Map</p>

		<p>1.6.5 should be omitted from the adopted plan.</p> <p>However, it is noted that a large area of peatland, known as Cul na Mona, has not been included as a 'preferred' or 'open for consideration' area. These lands are of the same type and nature as other Bord na Mona lands which have been included as 'preferred' or 'open for consideration' locations. The submission suggests that this area should have been included in the 'open for consideration' classification.</p> <p>Policy LS35 is also contrary to national targets for renewable energy generation. These areas tend to have lower population densities and a greater available wind resource and there are a number of operational wind farms elsewhere in the state which are located above this contour line. This metric should not dictate the preference or non-preference of a suitable wind farm site and it should be removed.</p>
13	Renewable Energy Systems (RES)	<p>Submission can be summarised as follows:</p> <p>The Minister's intervention is supported.</p> <p>The policies introduced by Laois County Council will significantly limit any future wind farm development in the county and it is unclear what objective scientific evidence was relied upon to inform the decision to adopt Appendix 5: Wind Energy Strategy and more particularly the Wind Energy Map Figure 1.6.5.</p> <p>Shortcomings associated with the adoption of the proposed map included in the Draft Section 31 Ministerial Direction are highlighted and it is requested that the entire mapping process is revisited from first principles in order to ensure reliance on objective and evidence based criteria.</p>
14	Brookfield Renewable	<p>Submission can be summarised as follows:</p> <p>The Minister's intervention is supported.</p> <p>The net effect of the wind energy policies within the County Development Plan is a near 'blanket ban' on future wind farm development in the county. It is unclear what objective scientific evidence was relied upon to inform the decision to adopt Appendix 5: Wind Energy Strategy and more particularly the Wind Energy Map Figure 1.6.5.</p> <p>It appears to Brookfield that the Section 31 Map has effectively chosen to highlight areas above 225m contour line as unsuitable for wind farm development, despite there being no scientific evidence to support this. There is concern at the detrimental impact the adoption of the Section 31 Map into the CDP will have on the viability of not only future projects, but projects that are currently at advanced planning and pre-planning stages within Laois and also on future repowering of existing operational</p>

		<p>wind projects.</p> <p>Submission also cites concerns that in following this approach, Laois County Council's ability to encourage inward investment, contribute to the development of a low carbon economy and offer communities an opportunity to participate in the benefits from future wind farm developments in Laois will be severely limited.</p> <p>The Minister is requested to appoint a Planning Inspector, in the absence of the above-recommended approach being adopted.</p>
15	Element Power Ireland Ltd	<p>Submission can be summarised as follows:</p> <p>The Minister's intervention is supported.</p> <p>However, there are serious concerns with the map (the Revised Map) that has been appended to the Draft Direction as Element Power believes that this map will greatly and significantly reduce the areas available for wind farm development in the county which in itself is not in line with national energy policy and moreover the Revised Map appears to have been generated by Laois County Council without having any scientific based evidence to change the map that was included in the previous Wind Energy Strategy (WES) as part of the 2011 – 2017 County Development Plan (Previous CDP).</p> <p>The mandatory and arbitrary exclusion zones introduced by the requirements of the Revised Map 1.6.5 are in breach of the planning policy guidance contained in the Wind Energy Guidelines 2006. The effect of the requirements of the Revised Map 1.6.5 is to significantly restrict the potential for wind energy development in the county which is contrary to national energy policy. The planning authority has not demonstrated sufficient and evidentially based reasoning for the significant policy departures from the guidelines. This deficiency in the evidential basis is contrary to the Guidelines, 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.</p> <p>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.</p> <p>Element Power supports a nationally consistent and strategic approach to wind farm development. There is concern at the approach taken, to either entirely remove, or significantly downgrade the classification of areas</p>

		<p>previously considered “Preferred” or “Open for Consideration” for wind energy development in the Revised Map. These proposals represent significant reclassifications that are presented without basis, for areas which have not experienced any landscape character changes and for which the methodological approach to classifying these areas remains unchanged from the Previous Laois CDP and associated WES to the Current Laois CDP and associated WES.</p> <p>On initial review, the Revised Map may give the impression that it facilitates wind development, however, in reality, on detailed review, it is clear that its actual affect would be to severely restrict any future development of the entire County.</p> <p>Laois County Council must be required at a minimum to undertake these landscape character assessments and to generate a new map which zones lands which are suitable for wind development (i.e. ‘preferred’ or ‘open for consideration’) and not suitable for wind development in County Laois.</p> <p>The Minister’s draft direction that the Map 1.6.5 – Wind Energy as adopted be removed is agreed with and welcomed, but it is requested that the Minister’s Direction should not require Laois County Council to include the Revised Map 1.6.5 – Wind Energy as included in the Draft CDP because the Revised Map, like the adopted Map, has been generated without any evidential planning basis.</p> <p>It appears from an examination of the areas declassified in the Revised Map, that Laois County Council has imposed a blanket ban on wind farm development above 225m across the county despite there being no scientific evidence to support this in the relevant Landscape Character Assessment (LCA) or in the wider Laois CDP.</p> <p>It is clear in the Draft Direction, the intention of the Minister is the “... securing of the maximum potential from the wind energy resources of the planning authority’s area”. However the effect of the Revised Map will be to reclassify the areas of land with the best wind resource in the county to “areas not for consideration” and to decrease the area of land in either an “open to consideration” or “preferred area” zoning by greater than 50% than what was zoned previously. Indeed, the one ‘preferred area’ remaining in the Revised Map, constitutes a minor 0.5% of the land area of the entire county and already hosts a six-wind turbine project. This would have a detrimental impact on the viability of not only future projects, but projects that are currently at advanced planning and pre-planning stages within the county.</p> <p>Circular Letter PL 20-13 advised local authorities to defer amending their existing Development Plan policies relating to wind energy until such time as the review of the 2006 Guidelines is completed. Planning</p>
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		<p>authorities are required to have regard to Guidelines issued under Section 28 of the Act. The Wind Energy Guidelines 2006 were issued under Section 28 and although being reviewed in part these guidelines have not been rescinded, withdrawn or updated at the time of writing. Laois County Council is therefore acting in direct contravention of its national and regional obligations by proposing revisions to its wind energy policy.</p> <p>The Minister is requested to appoint an independent Planning Inspector to review the situation in this case and that the Inspector is requested to consider whether the Revised Map is in keeping with the following statement in the Draft Direction “... <i>securing of the maximum potential from the wind energy resources of the planning authority’s area</i>”.</p>
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SECTION 3 – Summary of Views and Recommendations of the Elected Members of the Planning Authority

The following Views and Recommendations were received from the Elected Members of Laois County Council on the Draft Direction.

Sub. No	Group / individual	Summarised issues
1	Cllr Noel Touhy (See Appendix B for full text of the submission)	<p>Submission can be summarised as follows:</p> <p>The accusation that the Elected Members of Laois County Council have ignored or not taken sufficient account of the Minister's submissions of November 2016 and May 2017 is strongly refuted. CDP documents clearly show that these submissions were taken fully into consideration, ample evidence was available to support the decisions taken and the CDP is therefore in compliance with the requirements of the Act.</p> <p>Achieving sustainable development involves balancing competing requirements of many different plans and needs and also involves consideration of submissions received by the public. The Minister's focus here is too narrow and does not take into account the broad range of issues that need to be considered.</p> <p>The Minister's claim that insufficient grounds have been stated for the Council's departure from the 2006 Guidelines is refuted. Section 28(1B)(b) of the Act states that reasons must be given for departing from policy guidelines. Written statements supporting the new County Development Plan provide these reasons.</p> <p>The Minister's cites non-compliance with Section 10(2)(n) of the Act, arising from Policy EN7, Section 6.1 (Appendix 5) and revised Wind Energy Map 1.6.5, which severely undermine and negate practical measures to adapt to climate change and reduce reliance on fossil fuels and also that the SEA Environmental Report does not contain information on measures which will reduce or offset the effects on the environment of the above-mentioned. This assertion is refuted. The requirement to adapt to climate change has been taken very seriously in the CDP and particular attention is drawn to the following:</p> <ul style="list-style-type: none"> • Laois has already facilitated significant wind farm projects, with an energy output of 82 MW and which would provide power for 114,000 homes; • An evidence-based assessment of the county, involving use of the SEAI Wind Atlas, was undertaken in order to identify areas eminently suitable for wind farm development. This established that there are no such areas in the county; • It is denied that implementing policy EN7 will result in significant

		<p>adverse effects on the environment. Significant adverse effects will occur if it is not implemented, as per the Draft Direction;</p> <ul style="list-style-type: none"> • Laois County Council also fully intends on developing other mechanisms to support commitment to reduce reliance on fossil fuels. <p>The Minister states that the inclusion of a mandatory setback stipulation within Policy EN7 and in Section 6.1 of Appendix 5, coupled with the requirements of revised wind energy map 1.6.5 results in an arbitrary and mandatory exclusion or setback distance, in breach of Sections 5.6 5.12 of the Wind Energy Guidelines 2006, in that they remove the capability for a case by case assessment of such applications based on an objective analysis of their impacts on the specified property types. It is agreed that the Wind Energy Guidelines 2006 contain non-mandatory guidance and this was discussed and considered as part of the CDP process. The restrictions were reduced in a considered manner, which is in keeping with the need to achieve sustainable development.</p> <p>The Minister states that the mandatory and arbitrary exclusion zones introduced by Policy EN7 and in Section 6.1 of Appendix 5, coupled with the requirements of revised wind energy map 1.6.5 are in breach of the Wind Energy Guidelines 2006 as they do not maximise the wind energy potential of the county. This statement is refuted. The exclusion zones are not arbitrary but were to achieve a balance with the other needs of the county, including to protect human health and amenity. An evidence based assessment of the county involving the SEAI Wind Atlas to identify areas deemed eminently suitable for wind farm development established that there are no such areas in County Laois. While the impact may be to restrict further sub-optimal development, this should be taken in context. Laois has already facilitated significant commercial wind farms of c. 82 MW which would supply the energy consumption requirements of c. 114,000 households; well in excess of the population of County Laois and Laois County Council also fully intends on developing other mechanisms to support commitment to reduce reliance on fossil fuels.</p> <p>The Minister states that the planning authority has not demonstrated sufficient and evidentially based reasoning for the policy departures from the Wind Energy Guidelines 2006, which has resulted in non-compliance with Sections 28(1), 28(1B)(b) and 31(1)(c) of the Act. This is refuted. The planning authority has sufficient evidence to support a 1.5km setback, in line with the precautionary principle. This is broadly equivalent to 10 x turbine height for a now common turbine of 150m – 175m in height. Attention is also drawn to a supplementary submission from the Irish Doctors Environmental Association, which raised serious questions in relation to the adequacy of the Wind Energy Guidelines 2006. Attention is also drawn to a situation in Co. Cork, where a number of families who lived within 1km of a wind farm were forced to move out of their homes</p>
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		<p>due to wind turbine noise-related nuisance (Case Ref.2011-9955-P). In this case, the wind farm operator, Enercon Wind Farm Services Ltd, admitted liability. It would have been negligent for the Elected Members to ignore this relevant information.</p> <p>The Minister states that the restrictions imposed on wind farm development would seriously restrict the potential for wind energy infrastructure in County Laois in the future. The changes would be significantly in conflict with national and regional policy objectives to support the development of wind energy as a component of meeting Ireland's commitments to reducing greenhouse gas emissions and increasing renewable energy resources. This is refuted. County Laois occupies just 2.4% of the national landmass and to suggest that changes to turbine setback distances would have a significant impact on national emissions/renewable energy commitments seems to be an unreasonable statement. Reference is made to the evidential basis which supported the restrictions, the fact that Laois has already facilitated significant commercial wind farm projects with an energy output of 82 MW and which would provide power for 114,000 homes and the fact that Laois County Council also fully intends on developing other mechanisms to support commitment to reduce reliance on fossil fuels.</p> <p>The Wind Energy Guidelines have never been subject to SEA; a clear contradiction of recent Planning Circular PL 5/2017. The Minister is asked to clarify how it is the case that the new Guidelines will be subject to SEA, but the 2006 Guidelines were not.</p>
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The following views were outlined at the Statutory meeting of the Full Council held on the 11th September 2017 -

The Councillors remain opposed to the draft direction with one elected member advocating people power.

It was noted that Government guidelines on Wind Energy have not yet been finalised. The decision on the Laois County Development Plan 2017-2023 was made in a democratic manner.

Cannot understand how Laois County Council is liable for the legal costs associated with a Judicial Review of any decision made by Laois County Council.

It was considered that the Council made a very conscious decision in relation to the wind energy debate. It was disappointing that the direction hasn't been as extensive as it should have been, leaves many questions still to be answered.

The Councillors considered the submissions made and noted a lot of strong points made in submissions received but will not make any difference as the Council will be overruled. Disappointed that the views of Laois County Council were not taken on board.

The direction should be adjourned pending the adoption of the Wind Energy Guidelines. It would be easier to bring in setback distances if Ministers give an indication as to what distance is wanted. No point in providing much comment until Minister gives an idea of this.

Some of the Councillors queried why the Minister took a different approach to the Donegal and Westmeath County Council Wind Energy Policy.

Consideration should be given to wave power, as a means of harnessing renewable power. Reference to Scotland, which has large amount of such energy generation.

SECTION 4 – Summary of Views and Recommendations of the Eastern Regional Assembly

No submission has been received from the Eastern Regional Assembly.

SECTION 5 – Chief Executive’s Recommendations on How to Give Best Effect to the Draft Direction

The Council initiated its review of the Laois County Development Plan 2011 – 2017 on 9th October 2015, with the publication of a notice to inform the general public of the Council’s intention to prepare a new development plan for the county.

The Council thereafter undertook a number of stages in the preparation, which ultimately led to the adopted Laois County Development Plan 2017 – 2023. Each of these stages is relevant to the current Draft Direction, particularly in the context of how to give best effect to its implementation. Below is a summary of the preparation of the new Development Plan.

Pre-Draft Stage

The methodological approach to the Council’s Wind Energy Strategy was set out in the pre-draft Wind Energy Strategy, which included an updated Wind Energy Map. In short, the pre-draft Wind Energy Strategy outlined as follows:

- There were **no strategic areas** within the county, which are eminently suitable for wind farm development;
- There were **two preferred areas** within the county, which are suitable for wind energy development. These areas were Cul na Mona, between Portlaoise, Abbeyleix and Mountrath, and the area straddling the Laois, Tipperary, Kilkenny border between Rathdowney and Templetohy and due northeast of the recently completed windfarm site at Lisheen, County Tipperary;
- There were **two open for consideration areas** within the county, applications within which will be treated on their merits, with the onus on the applicant to demonstrate why the development should be granted permission. These areas were; the area northeast of N80 National Secondary Road between Mountmellick and Killeigh and Cloneygowan, Co. Offaly, and the area on the northwest side of the Iarnród Éireann railway line, outside Errill and extending westwards to the Tipperary border.

The pre-draft Strategy included a number of revisions to the Wind Energy Map, including the redesignation of lands east of Ballinakill as open for consideration; the omission of an open for consideration area at Cullahill; and the omission of a preferred area at Cullenagh.

The map at Figure 1 below outlines the pre-draft Wind Energy Map, as presented to the Elected Members.

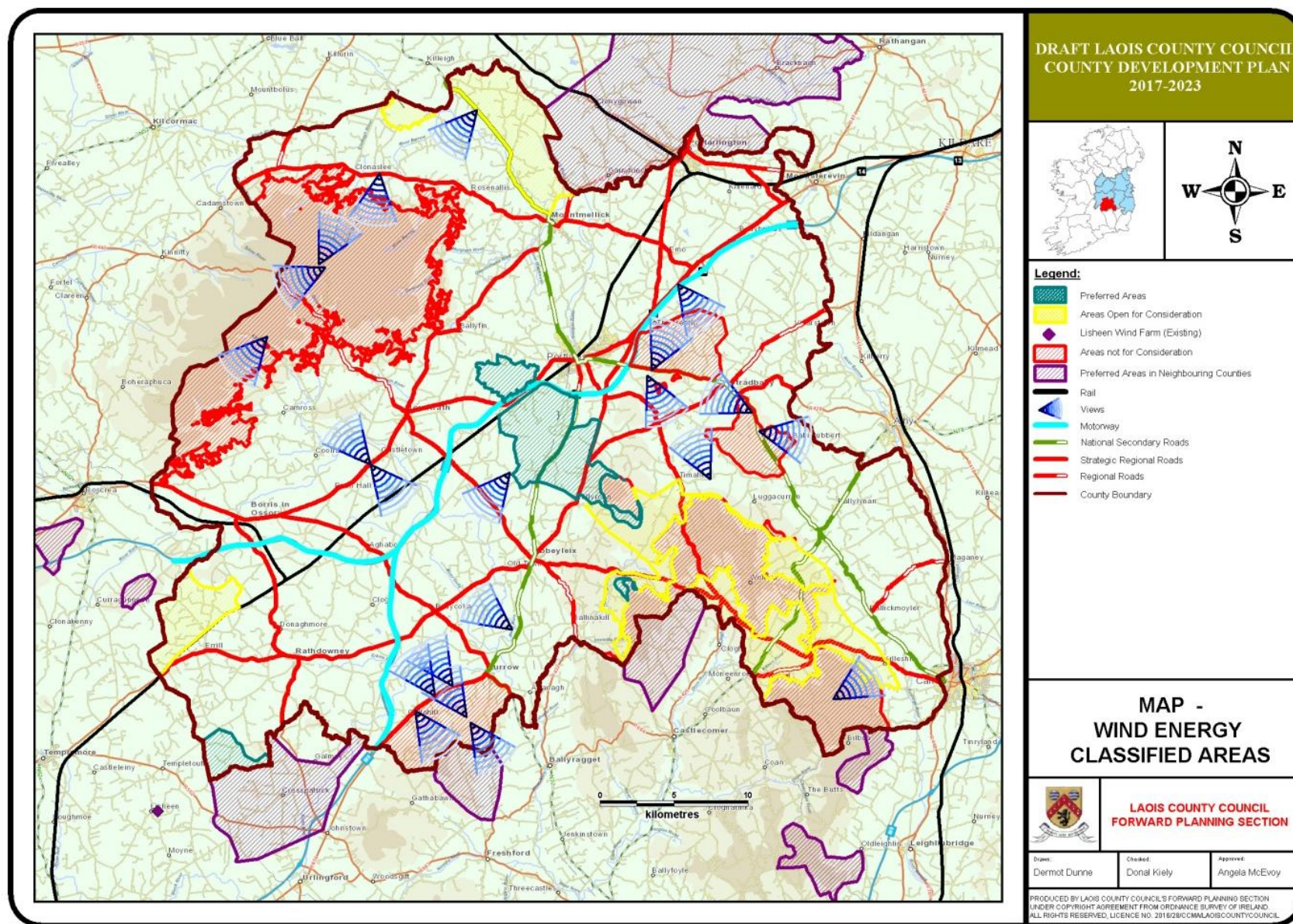


Figure 1: Pre-draft Wind Energy Map as presented to the Elected Members

Draft Stage

The Draft County Development Plan was adopted by the Elected Members at the Council meeting on the July 25th 2016. In adopting the Draft Plan, the Elected Members incorporated a number of amendments to the pre-draft Plan, including important amendments to the Wind Energy Strategy and the Wind Energy Map, as follows:

- The omission of the preferred area at Cul na Mona, with the area instead designated as not open for consideration;
- The redesignation of the preferred area at Spink as open for consideration;

Figure 2 below outlines the Draft Wind Energy Map, adopted by the Elected Members on July 25th 2016.

The Elected Members also resolved to include an additional Policy EN 7, which required as follows:

“EN7 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.”

The Elected Members also resolved to include an additional Section 6.1 of Appendix 5, Wind Energy Strategy, which required as follows:

“6.1 Buffer Zones

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.”

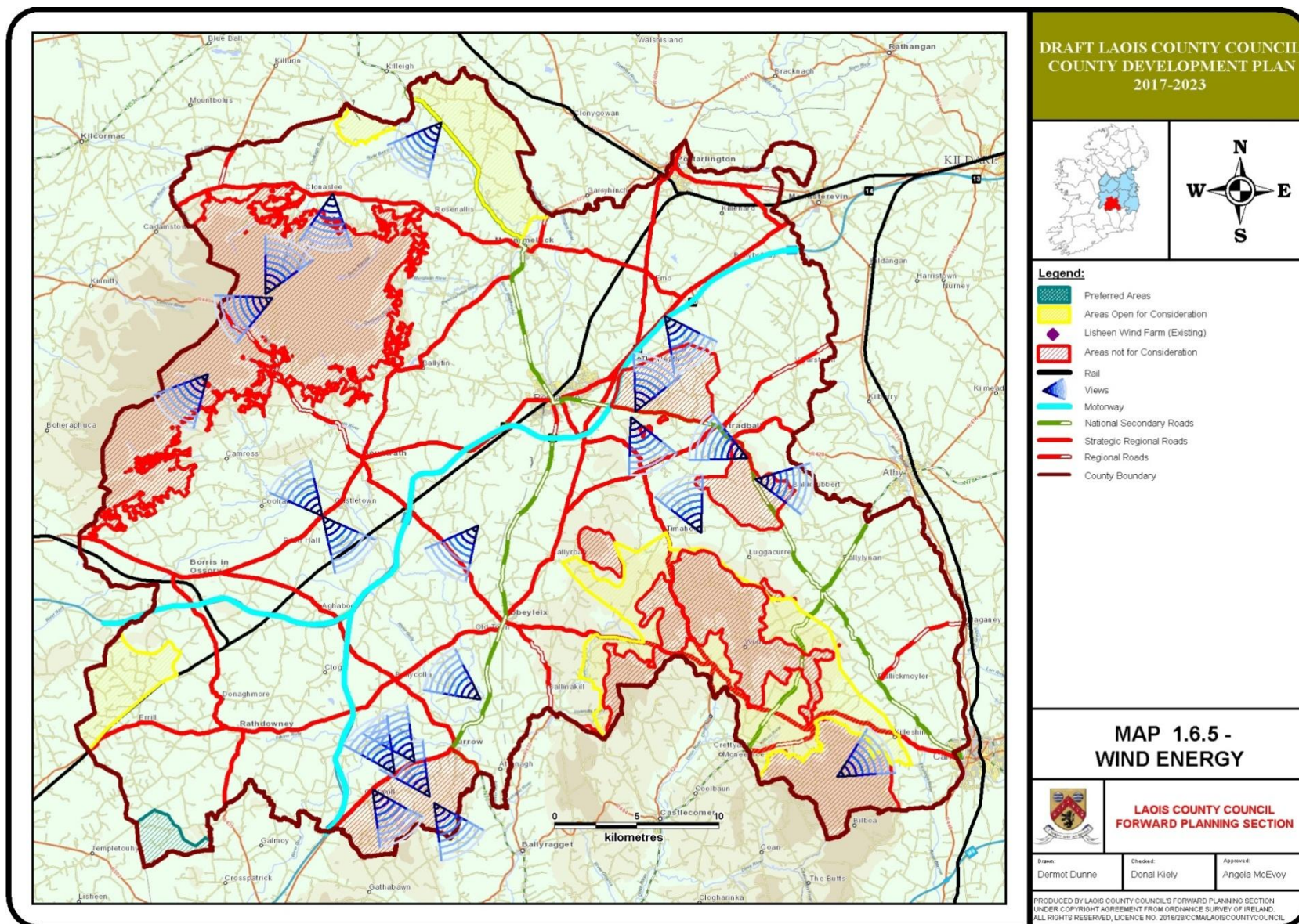


Figure 2: Draft Wind Energy Map adopted by the Elected Members on July 25th 2016

Proposed Material Amendments/Alterations Stage

Following the conclusion of the public consultation on the Draft Development Plan, the Chief Executive prepared a report to summarise and respond to submissions received and to set out proposed amendments to the Draft Development Plan, having regard to the content and substance of submissions received.

The Chief Executive recommended the removal of Policy EN 7 and Section 6.1 of Appendix 5, outlining the following:

“The Council is legally obliged to take account of National Guidelines in the formulation of Planning Policy. The setback requirements proposed in EN7 are considered to be an inappropriate means of regulation in this area, which directly contravene National Guidelines. The outcome of the ongoing review of the Wind Energy Guidelines 2006 will be available to inform policy in this area and subsequently will be brought forward for formal incorporation into the Plan. It is anticipated that issues raised in many of the submissions such as noise and shadow flicker will be addressed in the aforesaid Guidelines review. The preparation by the Government of a Renewable Energy Planning Framework for Export is also necessary to inform local policy formulation.

In the overall consideration of these matters, account must also be taken of obligations in relation to meeting Renewable Energy targets which apply both nationally and locally.

It is not considered appropriate in this regard to introduce policies which may unilaterally restrict consideration of almost the entire county for Wind Energy projects. Having regard to the ongoing review of National Policy, to the submission of the Department of the Environment, Community and Local Government, and the Council’s legal obligations to adhere to National Policy, it is recommended that EN7 not be proceeded with pending the finalisation of both the review of the National Guidelines on Wind Energy and the Planning Policy Framework for Renewable Energy Export in accordance with the following:

Remove Policy EN7 from the Draft Plan in order to comply with National Policy and guidelines and ministerial advice...Remove Section 6.1 of Appendix 5: Wind Energy Strategy of the Draft Plan in order to comply with National Policy and guidelines and ministerial advice.”

The Chief Executive also recommended identifying all areas of the county outside of the four wind classification areas as being ‘areas not for consideration’, in view of the fact that the lands outside of these areas did not warrant designation because the prevailing wind regime is inadequate to support a commercial wind energy development.

Having considered the Chief Executive’s Report, the Elected Members resolved to amend Wind Energy Map 1.6.5 further, to remove all open for consideration areas within the county, as shown in Figure 3 below.

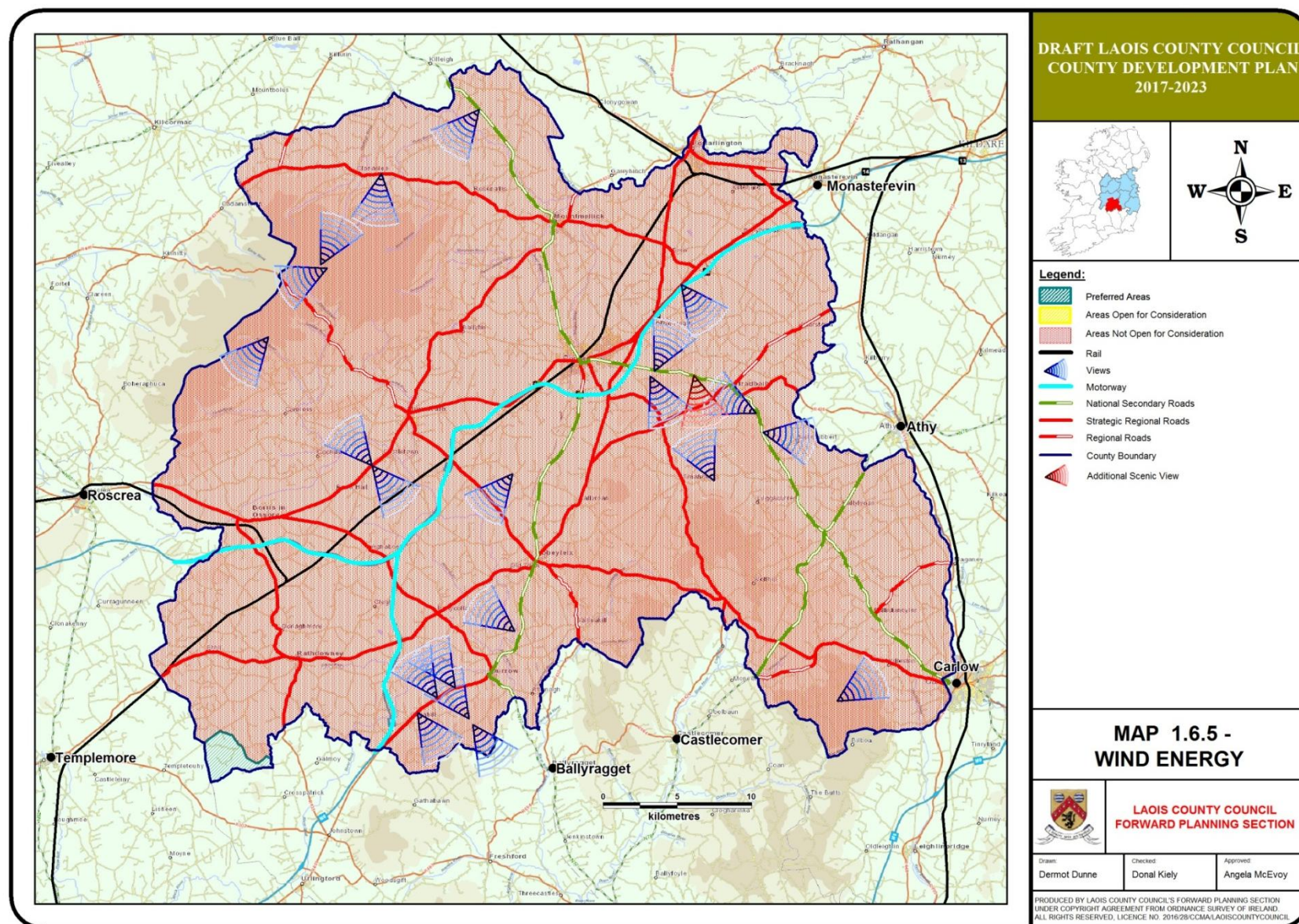


Figure 3: Revised Wind Energy Map 1.6.5 proposed at the Proposed Material Amendments / Alterations stage

Following the conclusion of public consultation on the Proposed Material Amendments / Alterations, the Chief Executive prepared a report to summarise and respond to all submissions received and to set out recommendations, having regard to the content and substance of submissions received. In particular the Chief Executive noted:

“In respect of the revised Wind Energy Map 1.6.5, the Chief Executive firstly wishes to clarify that revised Wind Energy Map 1.6.5 has not been produced in order to take account of the provisions of draft Policy EN7. Draft Policy EN7 and Wind Energy Map 1.6.5 are unrelated, in this respect.

The Chief Executive notes and acknowledges that the Wind Energy Guidelines (2006) provide current Government policy with respect to planning for wind energy development around the country and that, in accordance with Section 28 of the Planning and Development Act, 2000, as amended, the Planning Authority has a legal requirement to have regard to their provisions in the performance of its functions. The Chief Executive also notes that the Guidelines will remain in full statutory force until an ongoing review is concluded later this year and new Guidelines are published.

In order to contribute to meeting Ireland’s legally binding obligations in relation to tackling the drivers of climate change, there is a need for the Planning Authority to plan positively for the future and this includes facilitating and promoting opportunities for sustainable, renewable energy development. Diversifying our current energy supply mix, with a particular emphasis on reducing our reliance on fossil fuel, will assist greatly in moving towards a low-carbon economy and society.

The advice of the Minister is noted, in particular in relation to the importance of utilising a mapping analysis approach to spatially identify areas of potential for wind energy development within the county.

Revised Wind Energy Map 1.6.5 has not been produced following a mapping analysis of the county. The intention of the Elected Members, in incorporating this revised Wind Energy Map, was to avoid centres of population within the county, where there is potential for conflict with wind farm developments in the future. The Chief Executive accepts and agrees with the Minister’s submission, in respect of the need for a clear and objective evidential basis to underpin the county Wind Energy Strategy. It is considered that revised Wind Energy Map 1.6.5 is not underpinned by an appropriate evidence base and as such represents an inappropriate means of regulating wind energy developments within the county.”

The Chief Executive recommended the removal of Revised Wind Energy Map 1.6.5 and incorporation of the Wind Energy Map 1.6.5 utilised within the Draft Plan.

Having considered the Chief Executive’s Report, the Elected Members resolved to adopt the revised Wind Energy Map (that shown in Figure 3 above) as part of the adopted Laois County Development Plan 2017 – 2023.

How to give best effect to the Draft Ministerial Direction

Wind Energy Map

The previous section has outlined the chronology of the preparation of the Laois County Development Plan 2017 – 2023, with particular reference to the Council’s Wind Energy Strategy and Wind Energy Map.

The Chief Executive understands that the main thrust of the Minister’s Draft Direction is to ensure that the Laois County Development Plan 2017 – 2023 remains consistent with the *Wind Energy Guidelines 2006* Ministerial Guidelines and to ensure that Laois County Council plans positively for wind energy development over the lifetime of the new Development Plan, in order to assist in harnessing the maximum potential of 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. The Chief Executive accepts that the adopted Development Plan, as it currently stands, does not provide for this.

Having regard to:

- (i) the submissions received on foot of the public consultation phase in respect of the draft Ministerial Direction;
- (ii) the views of the Elected Members of Laois County Council as expressed at statutory meeting of the 11th of September 2017;

and further, having regard to the following:-

- (iii) The National Renewable Energy Action Plan 2010 (Irish Government Submission to the European Commission);
- (iv) **The Government's Strategy for Renewable Energy 2012-2020;**
- (v) The Government's White Paper on Energy Policy – Ireland's Transition to a Low Carbon Energy Future 2015-2030;
- (vi) **The Government's National Mitigation Plan, July 2017;**
- (vii) Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change, July 2017,

I consider that the Laois County Development Plan 2017 - 2023 be altered in line with the draft Ministerial Direction so as to accord with the 2006 Wind Energy Guidelines and to include areas zoned "open for consideration" as shown on Map reference No. 1.6.5 (Figure 2 : Draft Wind Energy Map adopted by the elected members on July, 25th 2016) as attached to this report.

It should be noted that the Wind Energy Strategy of the Laois County Development Plan 2011 – 2017 does provide the necessary evidential basis and was developed following a thorough public consultation and environmental assessment process.

Omission of Policy EN7 and Section 6.1 of Appendix 5

The Chief Executive recommends the proposed omission of Policy EN7 and Section 6.1 of Appendix 5, as set out in the Draft Direction. Allied to the above-outlined recommendations in respect of the Wind Energy Map, the omission of these elements of the Development Plan would ensure that the Development Plan would thereafter contain positive policies and strategies towards meeting international legal obligations and tackling the drivers of climate change.

Appendices

Appendix A - Ministerial Letter and Draft Direction

Appendix B - Copy of each submission received as part of public consultation (16 total)