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

Mr Donal O'Sullivan,
Project Manager-Ireland,
Element Power Ireland,
Unit C, Building 4200,
Cork Airport Business Park,
Co Cork

Date: 24th August, 2017

Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August in relation to the Laois County Development Plan 2017-2023- Draft Ministerial Direction.

Please be advised that the contents will be noted in the Chief Executives Report to the Minister in this regard.

Mise le Meas,

Angela McEvoy
Senior Planner
Planning Section

Submission No. 16

McEvoy Angela

From: Kiely Donal
Sent: 15 August 2017 17:35
To: Donal O'Sullivan
Cc: McEvoy Angela
Subject: RE: Submission on Draft Direction

A Chara,

I wish to acknowledge receipt of your submission in relation to the above matter.

The contents of your submission will be taken into account in the preparation of the Chief Executives Report.

Is mise le meas, Donal

Donal Kiely,
A/Senior Planner,
Laois County Council,
057-86-64245

COO
MidlandsIrelandie
gateway to growth

From: Donal O'Sullivan [mailto:donal.osullivan@elpower.com]
Sent: 15 August 2017 15:40
To: Forward Planning
Cc: Kevin O'Donovan; Claire Walsh
Subject: Submission on Draft Direction

To whom it concerns,
Please find attached the submission of Element Power Ireland on the Draft Ministerial Direction issued to Laois County Council on the 18th of July 2017.

Please acknowledge receipt of this submission.

Regards,
Donal

Donal O'Sullivan
Project Manager - Ireland
Element Power Ireland

+353212427786
+353870610904
donal.osullivan@elpower.com
www.elpower.com

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Development Limited – Registered Office: Unit C Building 4200, Cork Airport Business Park, Cork, Ireland – Company Number: 487797 Directors: Tim Cowhig, Michael O'Neill, Nick Hexter, Kevin O'Donovan, Peter Harte, Dermot Byrne, Sean Maguire.

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Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Laois County Development Plan 2017-2023 – Draft Ministerial Direction

Forward Planning Department

Laois County Council

Aras an Chontae

James Fintan Lalor Avenue

Portlaoise

Co.Laois

By email to devplan@laoiscoco.ie

15th August 2016

Re: Laois County Development Plan 2017-2023 – Draft Ministerial Direction

To whom it concerns,

Element Power Ireland ***(Element Power)*** welcomes the opportunity to make a submission on the draft Ministerial Direction (Draft Direction) issued with respect of the Laois County Development Plan 2017-2023 (***"Laois CDP"***). From the outset it is important to state that Element Power highly commends and is fully supportive of the Minister's decision to intervene in this case given the previous submissions made by Element Power to date and on the draft and proposed amendments to the Laois CDP and the decision by the council to effectively install a blanket ban on the future development of wind farms in the county.

Notwithstanding this it is also important to highlight that Element Power has serious remaining 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).

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

In summary, despite the Ministers welcomed efforts in issuing the Draft Direction Element Power remains of the view that:

- *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, as they do not maximize 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 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 supporting development of renewable energy resources including wind energy infrastructure. The planning authority has not demonstrated sufficient and evidentially based reasoning, relating to the nature and characteristics of Laois, for the 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.*
- *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.*
- *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.*

Extract from Statement of Reasons included in Draft Ministerial Direction to Laois County Council issued on 18th of July 2016

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Element Power supports a nationally consistent and strategic approach to wind farm development. We are extremely concerned by the approach to either, entirely remove, or significantly downgrade the classification of areas 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.

It is for precisely this reason that 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.

On its face, the Revised Map may give the impression that it facilitates wind development, however, in reality, on detailed review and having regard to the summarised information set out below, it is clear that its actual affect would be to severely restrict any future development of the entire County.

With this in mind, we welcome and agree with the Minister's draft direction that the Map 1.6.5 - Wind Energy *as adopted* be removed but would respectfully request that the Minister's ultimate 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.

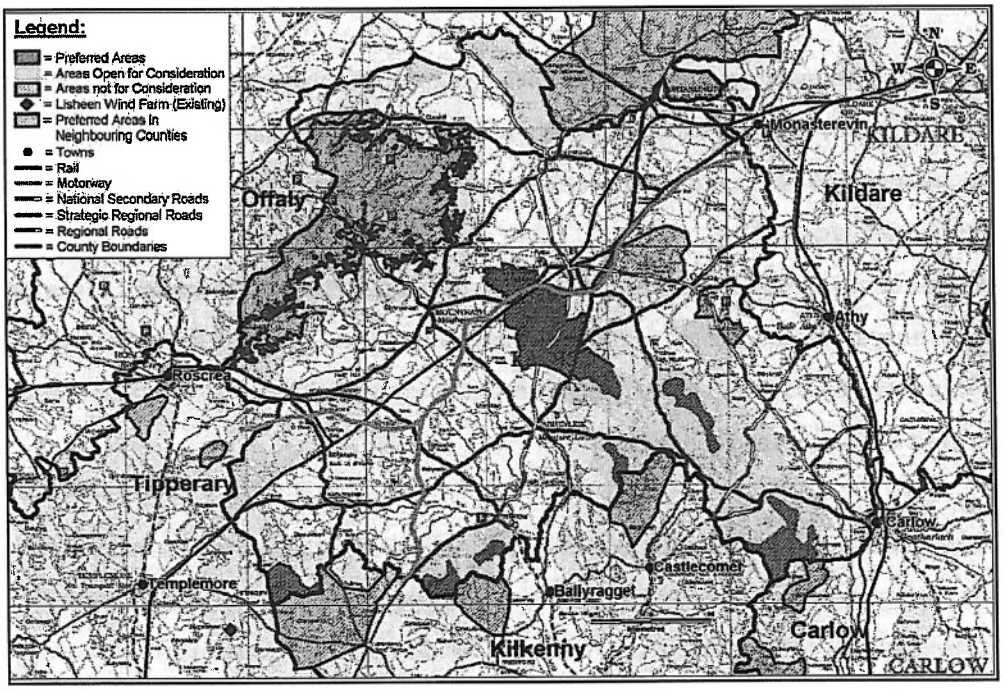
The extent of the lands being reclassified from the previous CDP are illustrated below, and in appendix 1 of this submission.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

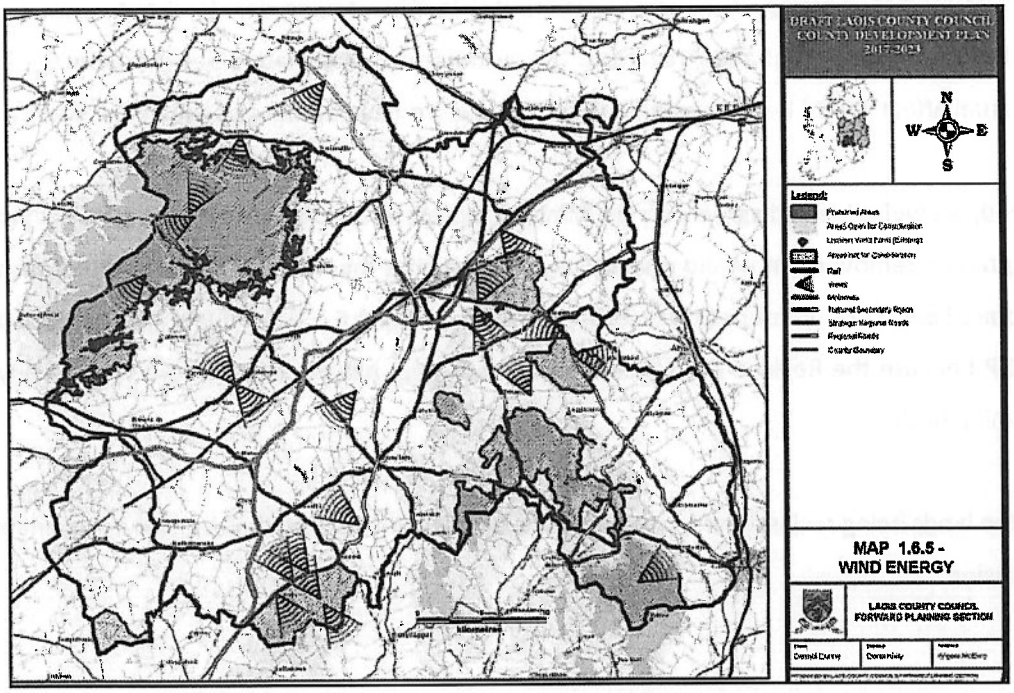
T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Previous Wind Energy Strategy Map 2011 – 2017 CDP



Revised Map issued with Draft Direction



Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

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. The only reference Element Power can see in the LCA is a spurious reference to restricting *"new development [housing and agriculture] above 225m"* in the **"Mountain Areas"** Landscape Character Type (LCT) (see figure 1 below).

It can be seen that the Mountain Areas incorporates the Slieve Blooms mountain range which was already an "Area not for consideration" in the previous WES in the previous CDP.

However in Element Power's respectful submission, this "general recommendation" for the "Mountain Areas" LCT does not constitute scientific evidence to support the removal of such vast amount of areas in this or other LCTs where there is no such reference, and which were previously either considered "Open to Consideration" or "Preferred". If this is indeed the reason Laois County Council (as the original authors of the Revised Map) have decided to reclassify significant parts of the county, then this restriction has been applied incorrectly on two grounds.

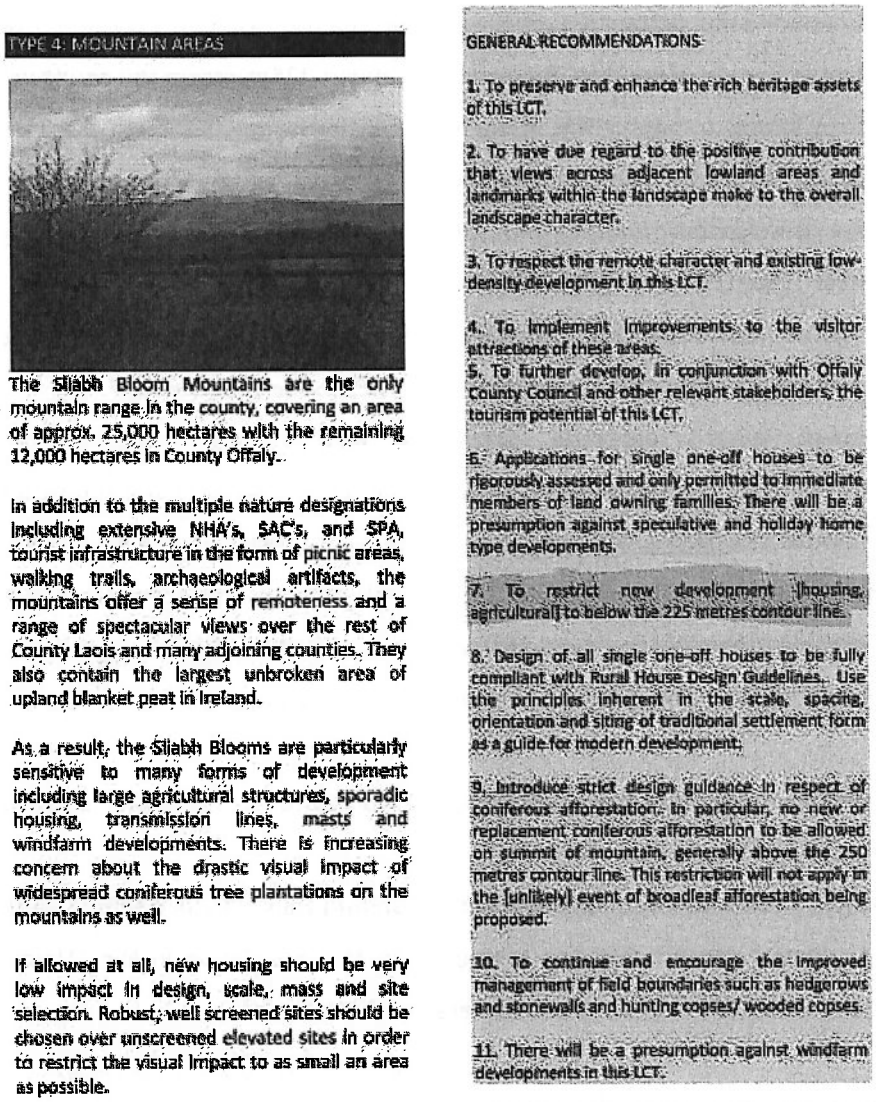
1. This restriction states it is only for "housing, agriculture", i.e. there is no mention of a restriction for wind or renewable energy.
2. This restriction has also been applied to the "Upland Hills" LCT in addition to the Mountain Area LCT, despite there being no reference to this restriction in the "Upland Hills" LCT description included in the Landscape Character Assessment.

The LCT's are illustrated in appendix 2 of this submission.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com



TYPE 4: MOUNTAIN AREAS

The Slieve Bloom Mountains are the only mountain range in the county, covering an area of approx. 25,000 hectares with the remaining 12,000 hectares in County Offaly.

In addition to the multiple nature designations including extensive NHA's, SAC's, and SPA, tourist infrastructure in the form of picnic areas, walking trails, archaeological artifacts, the mountains offer a sense of remoteness and a range of spectacular views over the rest of County Laois and many adjoining counties. They also contain the largest unbroken area of upland blanket peat in Ireland.

As a result, the Slieve Blooms are particularly sensitive to many forms of development including large agricultural structures, sporadic housing, transmission lines, masts and windfarm developments. There is increasing concern about the drastic visual impact of widespread coniferous tree plantations on the mountains as well.

If allowed at all, new housing should be very low impact in design, scale, mass and site selection. Robust, well screened sites should be chosen over unscreened elevated sites in order to restrict the visual impact to as small an area as possible.

GENERAL RECOMMENDATIONS

1. To preserve and enhance the rich heritage assets of this LCT.

2. To have due regard to the positive contribution that views across adjacent lowland areas and landmarks within the landscape make to the overall landscape character.

3. To respect the remote character and existing low-density development in this LCT.

4. To implement improvements to the visitor attractions of these areas.

5. To further develop, in conjunction with Offaly County Council and other relevant stakeholders, the tourism potential of this LCT.

6. Applications for single one-off houses to be rigorously assessed and only permitted to immediate members of land owning families. There will be a presumption against speculative and holiday home type developments.

7. To restrict new development (housing, agricultural) to below the 225 metres contour line.

8. Design of all single one-off houses to be fully compliant with Rural House Design Guidelines. Use the principles inherent in the scale, spacing, orientation and siting of traditional settlement form as a guide for modern development.

9. Introduce strict design guidance in respect of coniferous afforestation. In particular, no new or replacement coniferous afforestation to be allowed on summit of mountain, generally above the 250 metres contour line. This restriction will not apply in the (unlikely) event of broadleaf afforestation being proposed.

10. To continue and encourage the improved management of field boundaries such as hedgerows and stonewalls and hunting copses/ wooded copses.

11. There will be a presumption against windfarm developments in this LCT.

Figure 1: Extract from Mountain Areas LCA

Indeed 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 Element Power is extremely concerned at the detrimental impact the adoption of the Revised 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 the county. The effect of the Revised Map will be to reclassify the areas of land with the best wind resource in the County (outside of the Slieve Bloom mountain range which has always been designated as an unsuitable area) to "Areas not for

elementpower

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

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 as illustrated in Appendix 1. Indeed from a comparison from the previous CDP to the current CDP demonstrates that:

	Previous CDP	Current CDP using the Revised Map
Area of County Laois zoned as "Open To Consideration" areas	13.6%	8.5%
Area of County Laois zoned as "Preferred" areas	5.6%	0.5%

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 demonstrates the intentional discrimination shown towards further wind development in the county, adopted by Laois County Council in the drafting of the Revised Map.

As set out above, while on its face the Revised Map may give the impression that it facilitates wind development, in reality, on detailed review and having regard to the summarised information set out above, it is clear that its actual affect would at best be to restrict any future development to 0.5% of the land area of the entire County.

Element Power notes that 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 current Department of the Environment, Heritage & Local Government Wind Energy Development Guidelines, 2006 (DoEHLG Wind Energy Guidelines) is completed. Planning authorities are required to have regard to guidelines issued under Section 28 of the Planning and Development Act 2000 in the performance of their functions. The DoEHLG Wind Energy Guidelines were issued under Section 28 of the Act and although being reviewed in part (and importantly not in relation to the proposed landscape

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

assessment) 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.

In summary Element Power believes if Laois County Council are allowed to vary their plan with the Revised Map attached to the Draft Ministers Direction it will severely and significantly restrict further wind farm development in the County and it will create an undesirable precedent into the future whereby other Local Authorities could attempt to apply arbitrary constraints lacking any evidential planning basis to prevent further wind farm development in their counties.

Element Power requests that the Minister appoint an independent Planning Inspector to review the situation in this case and that the Inspector be requested to consider whether the Revised Map is in keeping with the following statement in the Draft Direction *"... securing of the maximum potential from the wind energy resources of the planning authority's area"*, which in our view it is not, for the reasons set out above. With this in mind, we would respectfully request that the Minister's ultimate Direction not take the Draft Direction's proposed step of requiring Laois County Council to include the Revised Map 1.6.5 – Wind Energy as included in the Draft CDP, because as should be apparent to any Independent Planning Inspector the Minister may wish to appoint, the Revised Map, like the adopted Map, has been generated without any evidential planning basis.

We thank you for the opportunity to contribute at this stage and look forward to continuing to engage with the Department and Laois County Council in the future. Thank you in advance for considering our submission.

Yours sincerely

Element Power Ireland

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Introduction

Element Power is a global renewable energy company that develops, acquires, builds and operates utility-scale wind and solar power projects. Element Power has an established track record in wind energy in Ireland, with its Irish team based in Tullamore, Co. Offaly and in Cork. Element Power has constructed and operates a portfolio of approximately 100MW of wind projects, with another 120MW of wind projects in construction in 2016, and has approximately 1GW of projects in development in Ireland. The Element Power team has previously developed and constructed over 16 wind farms in Counties Clare, Cork, Kerry, Donegal, Limerick, Galway, Waterford, Tipperary and Tyrone.

Element Power believes that as a developer of wind energy it plays an important role in helping Ireland comply with European and national policy and in addressing some of Ireland's most significant challenges such as:

- Climate change;
- EU & national renewable energy commitments
- National policy and renewable energy targets;
- Security of energy supply;
- Cost effective clean power production and increasing energy price stability.

Element Power fully supports sustainable development and proper planning while recognising the requirement to take into account any potential environmental impacts.

At its core, is Element Power's objective to work closely with communities to provide clean, cost effective and sustainable energy alternatives to limit the harmful effects that climate change is now bringing to our lives, and limit the damage done to the domestic economy through the importation of expensive fossil fues. We believe that Ireland's considerable wind resource has a central role to play in meeting these challenges. We hope that Laois County Council will maintain and further develop policy to provide a clear and progressive framework to encourage the appropriate development of these resources.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Landscape Character Types (LCT)

The original Landscape Character Assessment (Previous LCA) for the County of Laois was undertaken and published as a supporting document to the Previous CDP in 2011. The Previous LCA was undertaken to classify and describe the landscape of County Laois, providing an evidence based characterisation of the county's landscape components, the process of which was to assist in consistent decision making to achieve a balance between the protection, management and planning of the landscape. Seven different Landscape Character Types (LCT) for the County are identified with three of these LCT's considered for wind energy development namely LCT 1: Hills and Upland Areas, LCT 5: Peatland Areas and LCT 7: Rolling Hills Areas. To a lesser extent, certain undesignated peatlands are identified as 'Preferred' for wind energy development.

Appendix 6 LCA of the Current CDP sets out the 7 different LCT's within County Laois. The policies, recommendations and extent of these LCT's all remain unchanged from the Previous LCA.

Hills and Upland Areas

The Previous Wind Energy Strategy (Previous WES) classifies part of the *Hills and Upland Areas* of County Laois as 'Open for Consideration' and 'Preferred' for wind energy development. The DoEHLG Wind Energy Guidelines provides guidance on the siting and design in landscape character types such as Hilly and Flat Farmland which relates to this LCT and the existing WES advises that the siting and design principles of the DoEHLG Wind Energy Guidelines should be applied in relation to this LCT.

The wording in Section 4.5 of the existing WES under the heading 'LCT 1: Hills and Upland Areas' specifically states *'The Wind Energy Strategy has identified these upland areas for consideration in terms of future wind energy development and states that any such development must be carefully sited to minimise negative impacts.'*

The reclassification of areas considered for wind energy development as proposed in Revised Map 1.6.5 with the Draft Ministers Direction is now inconsistent with the above text. The majority of the Hills and Upland Areas previously considered 'Preferred' or 'Areas Open for Consideration' for wind energy development due to their sparse populations, viable wind regime, avoidance of designations

elementpower

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

and relatively low sensitivity/some capacity to absorb wind development are now either reclassified as 'Areas Not for Consideration' or removed entirely from the Area Classifications. The altered methodological approach to these wind energy reclassifications should be outlined in the current WES to ensure accordance with existing national guidelines, however there are no methodology revisions proposed.

The Revised Map proposes these changes without any reasoning or new evidence base beyond the Current WES stating '*having regard to the landscape character assessment policies, amendments have been made to the areas to reflect these policies*'. As stated above, the policies, recommendations and extent of the Hills and Upland Areas LCT remain unchanged from the Previous CPD/WES so the reasoning for these reclassifications are unfounded.

Element Power supports proper planning and development and questions the restrictive move to reduce viable wind energy development in the Hills and Upland Areas - areas which largely coincide with the elevated areas of the county and which are identified as areas for wind energy development in the Previous and Current WES. This incoherent approach to revising the Wind Energy Strategy demonstrates the flawed approach Laois County Council is taking with the current CDP and the Revised Map.

Peatland Areas and Lowland Agricultural Areas

In the central portion of County Laois, the Landscape Character Types of *Peatland Areas and Lowland Agricultural Areas* are classified as 'Preferred' in the Previous WES. National guidance provides guidance on the siting and design of wind energy developments on these landscape character types which is best described as Flat Peatland or Hilly and Flat Farmland in the DoEHLG Wind Energy Guidelines. The Current WES proposes to remove the 'Preferred' classification of these lands without reasoning or any proposal to identify the potential of this lands under any alternative classification.

The Lowland Agricultural Area covers the largest proportion of County Laois and is comprised primarily of pastoral and tillage agriculture. It is generally a flat open landscape with an enclosed character with well-treed road corridors, dense hedgerows, parkland and areas of woodland. There are no protected views or prospects within the portion of lands designated as 'Preferred' in the Previous WES.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

The character of Peatlands is described in the Landscape Character Assessment as strikingly flat and landcover is raised bog much of which is now exhausted and being considered for alternatives uses including afforestation, amenity and wind energy. Section 7.18 of the current CDP Written Statement sets out the following policy measure specifically in relation to LCT 5 Peatland:

> *NH36 Support the identification of projects that have the potential to achieve commercial value such as industrial developments, renewable energy, tourism developments etc. while at the same time promoting high environmental standards and supporting Biodiversity objectives.*

Again, Element Power believes this policy cannot be implemented to support renewable energy development when Peatland areas deemed 'Preferred' in the Previous WES are undesignated and removed from the Area Classifications in the Current WES. This stands contrary to Policy NH36 of the current CDP.

The Previous WES represents a clear link between the LCT's considered for wind energy development and the wind energy Area Classifications however this link is clearly broken in the Current WES. As detailed above the **removal** and **downgrading** in classification of areas previously considered for wind energy development is proposed without justification or any new evidence base.

Element Power request that:

(a) **the Minister's ultimate 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; and**

(b) **instead, Laois County Council should be required to produce a new map based on the Wind Energy Area Classifications in the Previous WES which represents a consistent methodology and approach to wind energy development while also complying with the requirements of strategic national policy and guidelines.**

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Incoherent Mapping with the Wind Energy Strategy Methodology

The landscape of County Laois currently holds areas that are 'Preferred', 'Open for Consideration' and 'Not for Consideration' to wind energy development. These area classifications and their geographical locations within County Laois are discussed further below.

The methodology surrounding the selection and classification of lands considered for wind energy development is clearly outlined in Sections 4 and 5 of the Previous WES and repeated in Sections 4 and 5 of the Current WES. The classifications of lands for wind energy development encompass the following considerations:

- Wind Resource Mapping
- Transmission Network/Grid proximity
- Settlement Patterns
- Designated Areas
- Landscape Character Types
- Views and Prospects
- Archaeology
- Recreation, Tourism and Amenity
- Landslide Susceptibility
- Wind Energy Strategies in Adjoining Counties

This methodology is aligned with the approach taken by a range of local authorities when considering and drafting a Wind Energy Strategy for their county and in the past was also adopted by Laois County Council in the preparation of their Previous and Current WES. The detail provided in the Current WES in relation to wind resource mapping, proximity of lands to a grid connection, archaeological monuments and landslide susceptibility all remain effectively unchanged from the Current WES, whilst settlement patterns from 2012 remain similar to settlement patterns in 2016.

However, the effect of the Revised Map is to significantly reclassify lands previously considered for wind energy development through the use of **incoherent mapping with the WES methodology**.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

County Laois in their Current CDP hasn't incurred any changes in relation to International, European or National ecological designations. Such changes can often influence the reclassification of designated wind energy areas to ensure the application of European legislation is addressed at a county level. Primary ecological and heritage sensitivities such as Special Projection Areas (SPA), Special Areas of Conservation (SAC) and Natural Heritage Areas (NHA) are afforded to a range of sites in County Laois and currently shape the existing wind energy classifications. These designations lend no reasoning to the extensive changes proposed in the Revised Map 1.6.5.

It does not accord that an unchanged landscape in relation to its character, views and prospects, ecological designations and sensitivity should be subjected to such a dramatic reclassification as proposed in the Current WES for lands which were previously considered for wind energy development. Element Power believe the methodology outlined in the Current WES has not been applied to the Revised Map which is attached the Draft Direction.

Element Power request that the discord between Sections 4 and 5 of the Current WES and the Revised Map 1.6.5 is rectified to ensure that the correct methodology is adequately reflected in the final graphical representation of areas considered for wind energy development. An accurate application of this methodology is presented in the Previous WES 'Wind Energy Strategy Map' and as such, is a more suitable instrument for local authorities and developers alike to evaluate the suitability of lands for wind energy development.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Analysis between the Revised Map contained in the Ministers Draft Direction and the previous Wind Energy Strategy Map contained in the 2011 -2017 CDP

Strategic Areas

This classification remains unchanged from the previous WES, with no areas in the county identified as 'Strategic Areas' and deemed eminently suitable for wind energy development.

Preferred Areas

Four areas are identified as 'Preferred Areas' in the previous WES. The Revised Map attached the Draft Direction significantly reduces these areas and limits the 'Preferred Areas' to one specific area of the county which is a former Bord na Móna cutaway bog near Rathdowney and in which six no. turbines are already operational. This one 'Preferred Area' constitutes a minor 0.5% of the land area of the entire county and demonstrates Laois County Councils approach in attempting to significantly and disproportionately limit future wind development in the county.

The remaining three 'Preferred Areas' in the Previous WES including Cullahill Mountain, Cullenagh Mountain near Ballyroan, extending eastwards to Luggacurren and Timahoe, southwards towards the Kilkenny border incorporating parts of The Swan, Wolfhill and Bilboa and westwards towards Spink and Ballinakill are all reclassified as 'Not for Consideration'. This represents a significant **twofold reclassification** for areas which in the Current WES are considered 'Preferred Areas' for wind energy development. We are extremely concerned that these areas are proposed for a twofold reclassification without foundation and without any objective assessment.

These areas were classified as preferred in the previous WES due to their sparse populations, viable wind regime, an avoidance of designations and relatively low sensitivity/some capacity to absorb wind development. They fall under the description of the Hills and Upland LCT which in the Current WES contains the wording *'The Wind Energy Strategy has identified these upland areas for consideration in terms of future wind energy development and states that any such development must be carefully sited to minimise negative impacts'*. The Current WES acknowledges that these areas are elevated and exposed with numerous coniferous tree plantations which offer some, albeit limited screening potential. Element Power questions on what basis these areas are no longer preferred. The current

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

WES does not contain any altered methodological approach to the wind energy classifications. As detailed above it does not accord that an unchanged landscape in relation to its character, views and prospects, ecological designations and sensitivity should be subjected to such a significant reclassification as proposed in the Revised Map for lands which were previously considered for wind energy development.

The Current WES states *'having regard to the landscape character assessment policies, amendments have been made to the areas to reflect these policies'*. As stated above, the policies, recommendations and extent of the Hills and Upland Areas LCT remain unchanged from the Current CPD/WES so the reasoning for these reclassifications are unfounded.

Element Power questions the seriously negative approach to the reclassification of these areas due to the lack of justification and transparency provided and the Councils motivation for proposing these amendments where three out of four previously 'Preferred Areas' which have not experienced any landscape character changes are now considered 'no go areas'.
Element Power reject this reclassification in its entirety and request that the 'Preferred Areas' in the Previous WES are reinstated, and moreover, this reclassification is in direct contravention of the requirement set out in the Draft Direction of *"... securing of the maximum potential from the wind energy resources of the planning authority's area"*

Areas Open for Consideration

'Areas Open for Consideration' in the Previous WES were described as *'areas that exhibit economically viable wind speeds, are sparsely populated, have some capacity to absorb wind development but which are sensitive enough to require a detailed site-by-site appraisal before any assumptions are made as to the suitability of the area* for development'.

The current WES proposes to reduce these areas from 14% to 8% of the county. This reduction is again due to the reclassification of two out of four areas previously identified as 'Areas Open for Consideration' to 'Areas Not for Consideration', which predominantly surround the previously

elementpower

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

'Preferred' upland areas of Timahoe extending eastwards to Luggacurren, southwards to The Swan, Wolfhill, Bilboa and westwards towards Spink and Ballinakill.

The Previous WES states *'applications in these areas will be treated on their merits with the onus on the applicant to demonstrate why the development should be granted permission'*. The Current WES makes no such statement however once again states *'having regard to the landscape character assessment policies, amendments have been made to the areas to reflect these policies'*. This is the only "reasoning" provided for the reduction in the 'Areas Open for Consideration' and as stated above the policies, recommendations and extent of LCT 1: Hills and Upland Areas to which the above areas relate remain unchanged so the reasoning for these amendments is unsupported.

Element Power questions how these reclassifications are in support of national and government policy for renewable energy development. **Element Power reject this reclassification in its entirety and request that the 'Areas Open for Consideration 'in the Previous WES are reinstated.**

Areas Not for Consideration

The Current WES significantly increases the 'Areas Not for Consideration' from 10% to 18% compared with the Previous WES. A large portion of these additional areas, comprise of areas currently considered 'Preferred' or 'Open for Consideration' in the Current CDP. It is clearly nonsensical that an unchanged landscape, currently considered for wind energy development, which hasn't encountered any changes to its landscape character or classification methodology should be subjected to such significant reclassification. Element Power questions this highly negative approach.

All of these additional areas are identified in the Current CDP as either sparsely populated, have viable wind speeds or potential capacity to absorb wind energy development but which are sensitive enough to require a detailed site by site appraisal. These areas are now reclassified without explanation, lending no reasoning to the extensive changes proposed and as are reflected in the Revised Map.
The EIA process is a well-established part of the planning process in assessing the individual merits of a wind farm application and is designed to ensure that any potentially significant adverse effects are avoided or mitigated for each specific application and area.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Conclusion

Element Power fully supports a nationally consistent and strategic approach to development. However as detailed above we have **serious concerns with the Revised Map 1.6.5 contained in the Draft Direction, which is in contrast to proper strategic planning and *sustainable* development for the area.**

Element Power has serious concerns with the **complete removal** and **downgrading** in classification of areas previously considered 'Preferred Areas' or 'Open for Consideration' to wind energy development. 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 Current CDP and WES.

It does not accord that an unchanged landscape in relation to its character, views and prospects, ecological designations and sensitivity as presented in the Current CDP and WES should be subjected to such significant reclassifications. These reclassifications are proposed without foundation through the use of **incoherent mapping with the WES methodology,** are not based on an objective assessment and set an unwelcome precedent for improper forward planning in Co. Laois.

The Current CDP and WES will unnecessarily and inappropriately terminate the implementation of European, National and Local policy to generate additional electricity from renewable sources which would otherwise satisfy the requirements of national policy and guidelines and the requirements of proper planning and sustainable development. Element Power would like to reiterate that wind energy is the most cost competitive, mature and readily available large-scale resource and sustainable development that can help Ireland meet its renewable energy targets.

Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Element Power requests that:

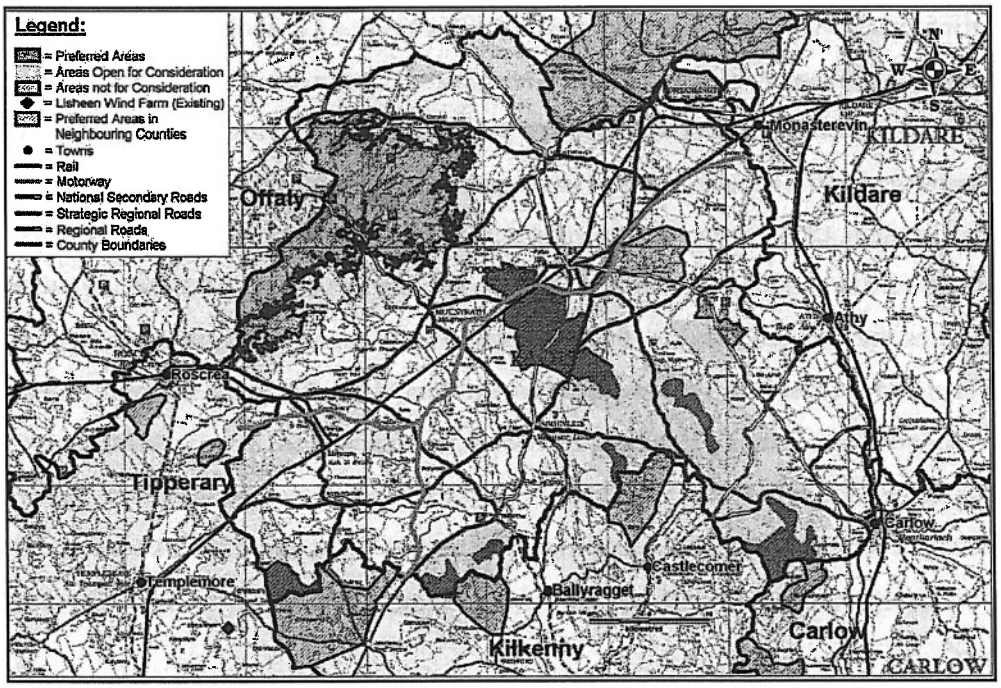
1. The Minister amends his Draft Direction to contain the original map that was produced in the original Landscape Character Assessment and included in the Previous CDP.
2. In the alternative, the Minister amends his Draft Direction to require Laois County Council to produce a new map based on the Wind Energy Area Classifications in the Previous WES which represents a consistent methodology and approach to wind energy development while also complying with the requirements of strategic national policy and guidelines.
3. At a minimum, the Minister amends his Draft Direction to *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.
4. As in previous cases (e.g. Westmeath Variation from March 2016) the Minister would appoint an independent planning inspector to review the submissions on this Draft Direction who could advise the Minister as to whether the Revised Map corresponds with proper planning and is in compliance with the following statement from the Ministers Direction *"... securing of the maximum potential from the wind energy resources of the planning authority's area"*.

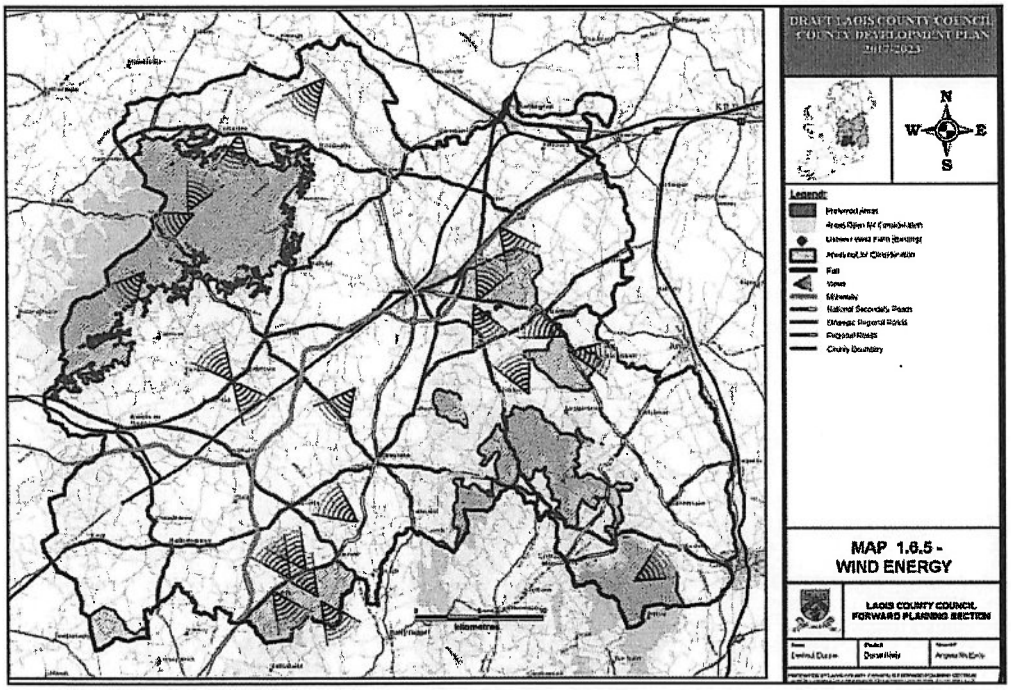
Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Appendix I: Comparison of the Previous Laois Wind Energy Strategy (2011-2017) with the Revised Map with the Ministers Draft Direction



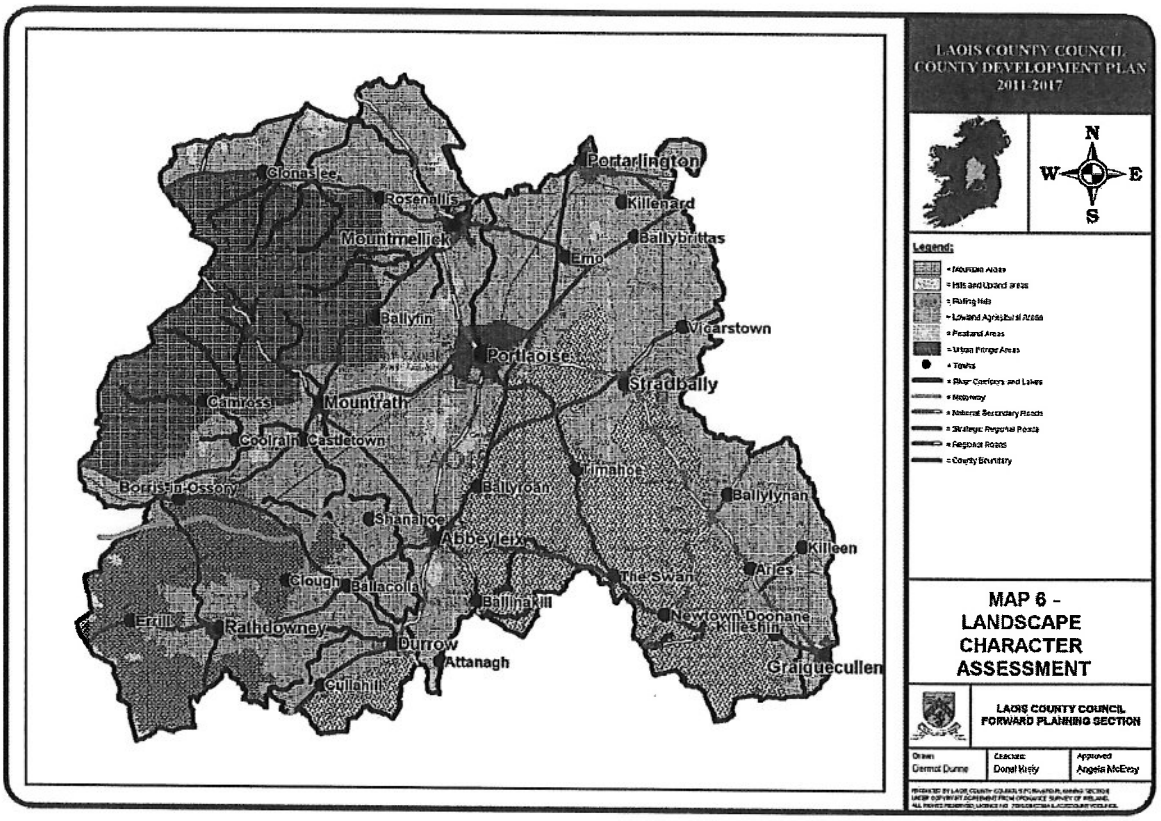


Element Power Ireland Limited
Unit C, Building 4200
Cork Airport Business Park
Cork
Ireland

T +353 (0)21 2427786
F + 353 (0)21 2380187
E info@elpower.com

www.elpower.com

Appendix II Landscape Character Assessment Extracted from the Current Laois Wind Energy Strategy (2017-2023)



Claire Deasy,
Planning & Environment Manager,
Brookfield Renewables,
Floor 5, City Quarter,
Lapps Quay,
Co Cork

Date: 24th August, 2017

Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August in relation to the Laois County Development Plan 2017-2023- Draft Ministerial Direction.

Please be advised that the contents will be noted in the Chief Executives Report to the Minister in this regard.

Mise le Meas,

Angela McEvoy
Senior Planner
Planning Section

Submission No. 15.

McEvoy Angela

From: Deasy, Claire [Claire.Deasy@brookfieldrenewable.com]
Sent: 15 August 2017 15:37
To: Forward Planning
Cc: Larkin, Angela
Subject: Submission to Laois County Development Plan 2017 – 2023: Draft
Attachments: Ministerial Direction Laois CDP_Brookfield20170815.pdf

To whom it may concern, please find attached Brookfield Renewable's response to the Draft Ministerial Direction on the Laois County Development Plan 2017 – 2023.

Please do not hesitate to contact me if you have any queries.

Many Thanks,

Kind Regards,
Claire

Claire Deasy
Planning & Environment Manager, Ireland

Brookfield Renewable
Floor 5, City Quarter, Lapps Quay, Cork, Ireland
T + 353 21 422 3651 M +353 86 183 3443
claire.deasy@brookfieldrenewable.com
www.brookfieldrenewable.com

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Brookfield

Forward Planning Department,
Laois County Council,
Áras an Chontae,
JFL Avenue,
Portlaoise,
County Laois

By e-mail to: devplan@laoiscoco.ie
15th August 2017

Re: Submission to Laois County Development Plan 2017 – 2023: Draft Ministerial Direction

To Whom It May Concern,

Brookfield Renewable ('Brookfield') welcomes the opportunity to make this submission to Laois County Council on the Laois County Development Plan 2017–2023: Draft Ministerial Direction dated 18th July 2017. This submission has been prepared pursuant to the public notice inviting observations and comments from interested parties. This submission is addressed to the Forward Planning Department, Laois County Council, Áras an Chontae, JFL Avenue, Portlaoise, County Laois and has been e-mailed to devplan@laoiscoco.ie before 4pm on Tuesday 15th August 2017.

Brookfield Renewable is part of Brookfield Renewable, one of the largest publicly-traded renewable power platforms operating across North America, South America and Europe. Employing close to 100 people in it Irish headquarters in Cork City, its Irish base in Cork forms an important part of Brookfield's global growth plans in Europe. Its portfolio primarily consists of hydroelectric and wind facilities totalling more than 10,700 MW of installed capacity and is diversified across 15 power markets in 7 countries.

Brookfield Renewable owns and operates one of the largest renewable energy portfolios on the island of Ireland. The Irish portfolio now consists of 350 MW of operating wind capacity across 19 wind projects in 9 counties.

Brookfield is deeply committed to complying with national policy, contributing to the reduction of greenhouse gas emissions, enhancing Ireland's energy security and contributing to a post-carbon and climate resilient economy. As it currently stands, Ireland is falling behind in meeting its stated targets in respect of renewable energy and considerable effort is needed by all citizens to meet the significant challenges ahead.

Brookfield is disappointed that Laois County Council, in adopting the Laois County Development Plan 2017-2023. The net effect is the introduction of policies in County Laois which will result in a near 'blanket ban' on future wind farm development in the county. It is unclear to Brookfield 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 in the proposed Laois CDP (the "**CDP Map**"), see Appendix 1, Figure 1 of this letter for ease of reference.

Brookfield welcomes and supports the intervention of the Minister for Housing, Planning, Community and Local Government (the "**Minister**"), specifically as the Minister points out that 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) to assist Ireland achieve the national policy objectives. Brookfield endorses the actions and the 'Statement of Reasons' provided by the Minister to delete policy EN7 and Section 6.1 of Appendix 5: Wind Energy Strategy and the efforts to seek to introduce a more balanced Wind Energy Map as part of the Laois CDP.

In addition to the support of the Ministerial Direction, the core purpose of this submission is also to respectfully highlight what we perceive as the shortcomings associated with the adoption of the proposed map included in the Draft Section 31 Ministerial Direction (the **"Section 31 Map"**) (See Appendix 1, Figure 2 of this letter for ease of reference).

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 in the county despite there being no scientific evidence to support this in the relevant Landscape Character Assessment or in the wider Laois CDP. Brookfield is extremely concerned 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 wind projects.

To summarise the proposed **Section 31 Map** will have the effect of:

1. Removing all future wind farm development potential from upland areas, i.e. those areas with the lower population densities and the most available wind resource;

2. Severely limiting 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.

In conclusion, the Laois County Development Plan 2017-2023 has a vital role to play in establishing the framework for renewable energy development and in cascading key national policies to the local level. Brookfield respectfully requests that the entire mapping process is revisited from first principles in order to ensure reliance on objective and evidence based criteria (we note that such an approach was taken in adopting the mapping to support the Laois County Development Plan 2011-2017). Such approach must be consistent with the relevant guidelines for 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.

Lastly, in the absence of the above recommended evidence based approach being adopted, we would advocate that an independent Planning Inspector is appointed to ensure that proper planning procedures are implemented to arrive at an objective outcome that balances the objectives and concerns of all stakeholders.

We appreciate your time in considering this submission.

Yours sincerely,

Claire Deasy

Planning & Environment Manager

Brookfield

Brookfield Renewable

5th Floor, City Quarter, Lapps Quay, Cork, Ireland T 00353 (0) 21 4223651

claire.deasy@brookfieldrenewable.com

Brookfield

APENDIX 1- Laois County Development Plan Mapping

Figure 1.0 "CDP Map"

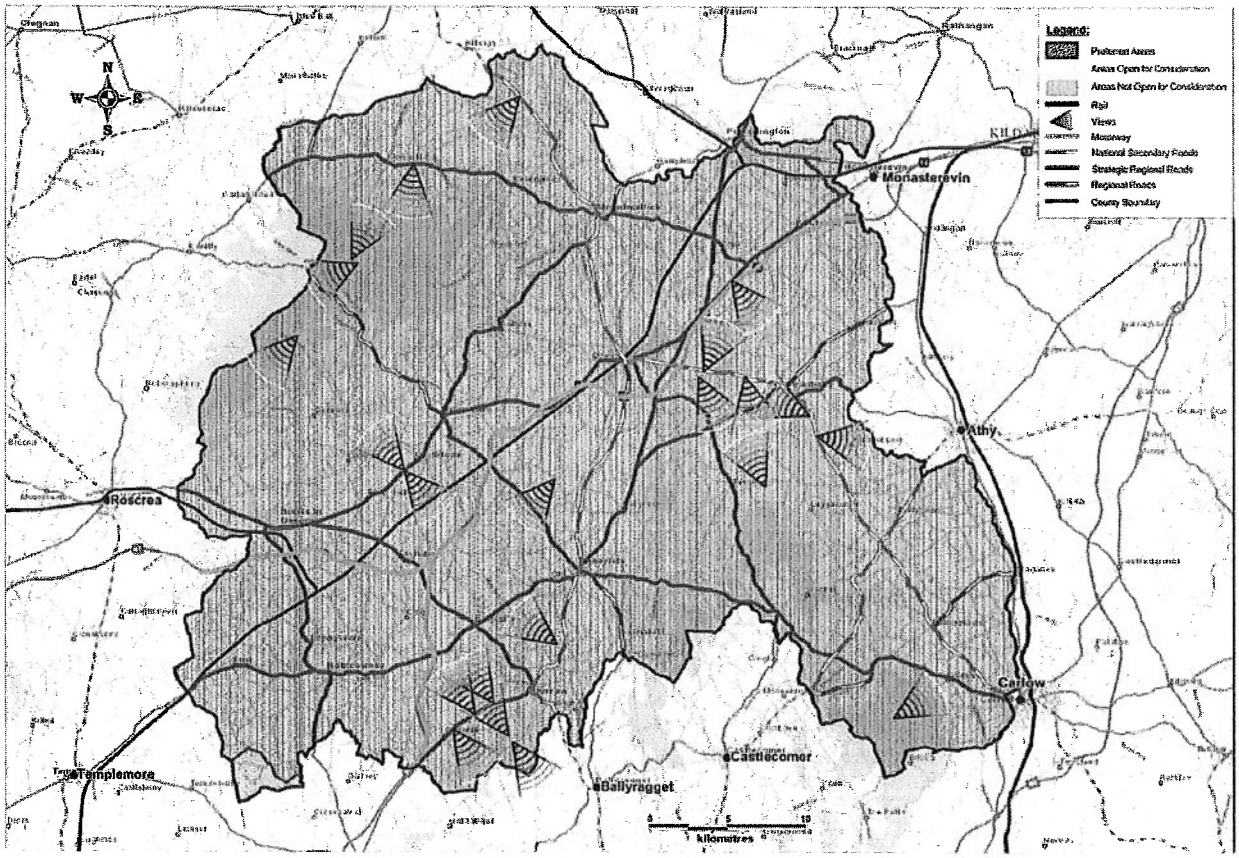
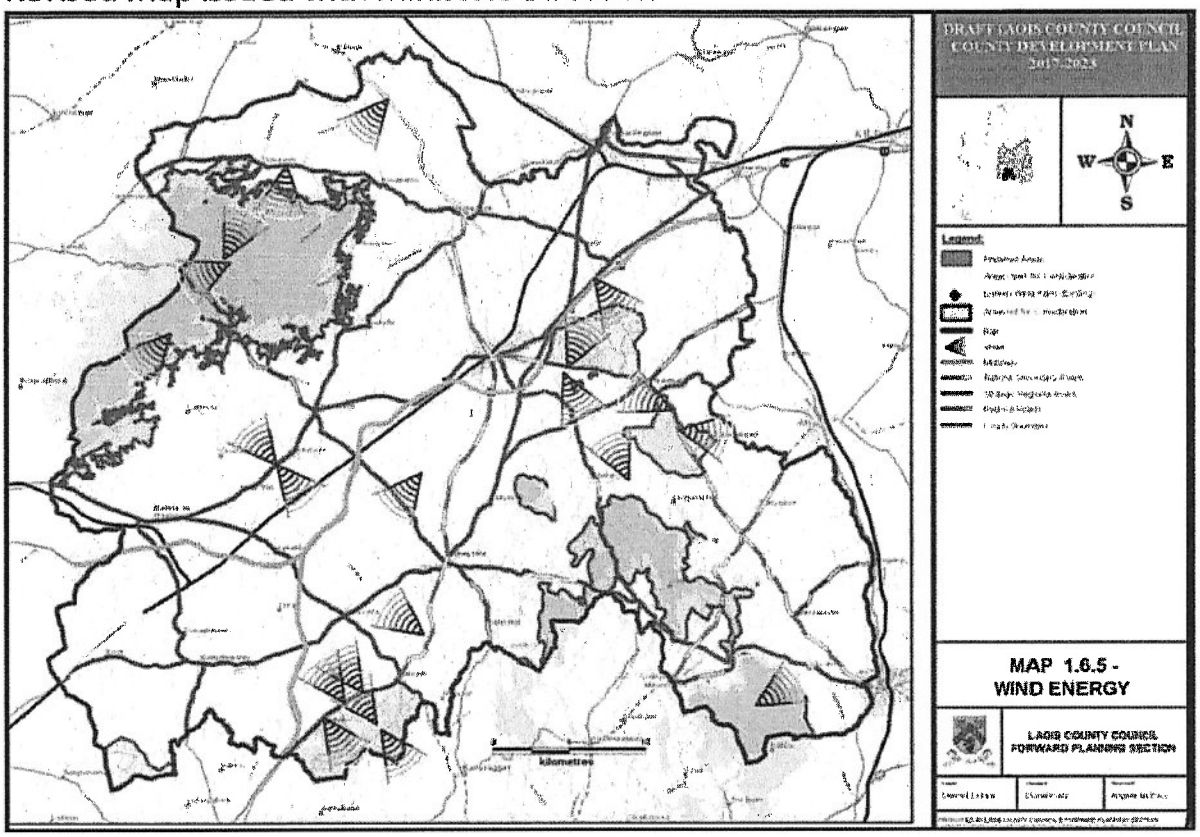


Figure 2.0 "Section 31 Map"

Revised Map issued with Ministers Direction



Edel Burke,
Development Principal-Ireland,
Renewable Energy Systems Limited,
Willowbank Business Park,
Willowbank Road,
Millbrook,
Larne,
Co Antrim,
Northern Ireland,
BT40 2SF

Date: 24th August, 2017

Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August in relation to the Laois County Development Plan 2017-2023- Draft Ministerial Direction.

Please be advised that the contents will be noted in the Chief Executives Report to the Minister in this regard.

Mise le Meas,

Angela McEvoy
Senior Planner
Planning Section

Submission No. 14.

McEvoy Angela

From: Edel Burke [edel.burke@res-group.com]
Sent: 15 August 2017 15:25
To: Forward Planning
Subject: Submission to Laois County Development Plan 2017 – 2023: Draft Ministerial Direction
Attachments: Submission to Laois County Development Plan 2017-2023 Draft Ministerial Direction.pdf

To Whom It May Concern,

Please find submission to Laois County Development Plan 2017-2023: Draft Ministerial Direction attached.

Should you have any queries, please do not hesitate to contact me.

Kind Regards
Edel

Edel Burke
Development Principal- Ireland

T +44 28 284 40601 | M +44 7500 803 734
edel.burke@res-group.com | www.res-group.com

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Renewable Energy Systems Limited
Willowbank Business Park, Willowbank Road, Millbrook, Larne
County Antrim, Northern Ireland BT40 2SF, United Kingdom
T +44 (0)28 2844 0580 F +44 (0)1923 299 299
E info@res-group.com www.res-group.com

Forward Planning Department
Laois County Council,
Áras an Chontae,
JFL Avenue,
Portlaoise,
County Laois

Our Ref: DV01-016498

By e-mail to: devplan@laoiscoco.ie
15th August 2017

15 August 2017

To Whom It May Concern,

Re: Submission to Laois County Development Plan 2017-2023: Draft Ministerial Direction

RES Ltd welcomes the opportunity to make this submission to Laois County Council on the Laois County Development Plan 2017–2023: Draft Ministerial Direction dated 18th July 2017. This submission has been prepared pursuant to the public notice inviting observations and comments from interested parties. This submission is addressed to the Forward Planning Department, Laois County Council, Áras an Chontae, JFL Avenue, Portlaoise, County Laois and has been e-mailed to devplan@laoiscoco.ie before 4pm on Tuesday 15th August 2017.

RES Ltd is deeply committed to complying with national policy, contributing to the reduction of greenhouse gas emissions, enhancing Ireland's energy security and contributing to a post-carbon and climate resilient economy. As it currently stands, Ireland is falling behind in meeting its stated targets in respect of renewable energy and considerable effort is needed by all citizens to meet the significant challenges ahead.

The net effect is the introduction of policies in County Laois which will significantly limit any future wind farm development in the county. It is unclear to RES Ltd 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 in the proposed Laois CDP (the "**CDP Map**").

RES Ltd welcomes and supports the intervention of the Minister for Housing, Planning, Community and Local Government (the "**Minister**"), specifically as the Minister points out that 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) to assist Ireland achieve the national policy objectives. RES Ltd endorses the actions and the 'Statement of Reasons' provided by the Minister to delete policy EN7 and Section 6.1 of Appendix 5: Wind Energy Strategy and the efforts to seek to introduce a more balanced Wind Energy Map as part of the Laois CDP.

However, the primary purpose of this submission is to respectfully highlight what we perceive as the shortcomings associated with the adoption of the proposed map included in the Draft Section 31 Ministerial Direction (the "**s.31 Map**").

In conclusion, the Laois County Development Plan 2017-2023 has a vital role to play in establishing the framework for wind energy development and in cascading key national policies to the local level. RES Ltd respectfully requests that the entire mapping process is revisited from first principles in order to ensure

reliance on objective and evidence based criteria (we note that such an approach was taken in adopting the mapping to support the Laois County Development Plan 2011-2017).

We appreciate your time in considering this submission.

Yours sincerely,

Edel Burke

Edel Burke
Development Principal
E edel.burke@res-group.com
T +44 28 2844 0602

Caitriona Carter,
Senior Project Manager,
Powergen Development,
Bord na Mona Plc,
Main Street,
Newbridge,
Co Kildare

Date: 24th August, 2017

Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August in relation to the Laois County Development Plan 2017-2023- Draft Ministerial Direction.

Please be advised that the contents will be noted in the Chief Executives Report to the Minister in this regard.

Mise le Meas,

Angela McEvoy
Senior Planner
Planning Section

Submission No. 13.

McEvoy Angela

From: Kiely Donal
Sent: 15 August 2017 17:32
To: Caitriona Carter
Cc: McEvoy Angela
Subject: RE: Section 31 Notice of Intent to Issue a Direction relating to Laois CDP 2017 - 2023

A Chara,

I wish to acknowledge receipt of your submission in relation to the above matter.

The contents of your submission will be taken into account in the preparation of the Chief Executives Report.

Is mise le meas, Donal

Donal Kiely,
A/Senior Planner,
Laois County Council,
057-86-64245

Midlandsireland.ie
gateway to growth

From: Caitriona Carter [mailto:Caitriona.Carter@bnm.ie]
Sent: 15 August 2017 15:35
To: Forward Planning
Subject: Section 31 Notice of Intent to Issue a Direction relating to Laois CDP 2017 - 2023

Dear Sir/Madam,
See attached submission from Bord na Móna on the Section 31 Notice of Intent to Issue a Direction relating to Laois County Development Plan 2017-2023.
Please feel free to contact me if you have any queries.
Kind Regards,
Caitríona Carter

Caitríona Carter
Senior Project Manager

Powergen Development
Bord na Móna Plc,
Main Street,
Newbridge,
Co. Kildare,
W12 XR59

Tel: 045-439348 Mob: +353(0)87-0942187
Email: caitriona.carter@bnm.ie

www.bordnamona.ie, www.loughboora.com/ , www.heartland.ie

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"Laois County Development Plan 2017-2023 – Draft Ministerial Direction",
Forward Planning Department,
Laois County Council,
Áras an Chontae,
James Fintan Lalor Avenue,
Portlaoise,
Co. Laois.

15 August 2017

Via email to devplan@laoiscoco.ie.

Re: Section 31 Notice of Intent to issue a Direction relating to Laois County Development Plan 2017 – 2023.

Dear Sir/Madam,

Bord na Móna would like to make the following submission in respect of the Section 31 Notice of Intent to issue a Direction relating to the Laois County Development Plan 2017 – 2023 issued by the Minister of Housing, Planning, Community and Local Government on 18th July 2017. This submission follows on from a previous Bord na Móna submission on the Draft Laois County Development Plan 2017 – 2023 dated 13th October 2016. In particular, Section 6.6.1.4 of that submission addressed our concerns with regard to elements of the plan relating to wind Energy developments.

1. The Draft Direction

The draft Direction relates specifically to wind energy policy included in Section 6.6 Energy and Communications (Policy EN7) and repeated in Appendix 5 (Wind Energy Strategy – Section 6.1) of the newly adopted County Development Plan 2017 – 2023. The specific wording of the policy is as follows:

"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 draft Direction also requires that the Wind Energy Map, namely Map 1.6.5, which is included in both the adopted County Development Plan and the appended Wind Energy Strategy, is removed and replaced with the map that was included in the initial Draft County Development Plan 2017- 2023.

BORD NA MÓNA
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2. Bord na Móna Submission

Policy EN7

Bord na Móna welcome the intervention of the Minister and support the measures proposed in the Draft Direction. We consider that EN7 is contrary to EN1, EN3 and EN4 which set out that it is the policy of the Council to:

"EN1: Encourage and favourably consider proposals for renewable energy developments and ancillary facilities subject to compliance with normal planning and environmental criteria; in order to meet national, regional and county renewable energy targets and to facilitate a reduction in CO2 emissions and the promotion of a low carbon economy, and in compliance with Article 6 of the Habitats Directive.

EN3: Promote and facilitate wind energy development in accordance with the Guidelines for Planning Authorities on Wind Energy Development (Department of the Environment, Heritage and Local Government, 2006) and the Wind Energy Strategy which forms part of this Plan, and subject to compliance with normal planning and environmental criteria.

EN4: Promote and encourage the development of energy from renewable sources such as hydro, bio - energy, wind, solar, geothermal and landfill gas subject to compliance with normal planning and environmental criteria and the development management standards contained in Section 8."

It is clear that policy EN7 and the appended Wind Energy Strategy are inconsistent with National policy and targets for renewable energy generation. It is also inconsistent with current national wind energy development guidance in particular the following specific policies included in the recent interim guidelines issued by the Department of Housing, Planning, Community and Local Government in July 2017:

- The National Renewable Energy Action Plan 2010 (Irish Government submission to the European Commission);
- The Government's Strategy for Renewable Energy 2012 – 2020 (DCENR);
- The Government's White Paper on Energy Policy - Ireland's Transition to a Low Carbon Energy Future 2015-2030 (DCENR); and
- The Government's National Mitigation Plan, July 2017 (DCCAE).

EN7 is also not consistent with the setback distance outlined in the 2006 Guidelines or in the more recent Interim Guidelines issued by the Department of Housing, Planning, Community and Local Government in July 2017 which require a visual amenity setback of 4 times the turbine height between a wind turbine and the nearest residential property, subject to a mandatory minimum distance of 500 metres. It also conflicts with a statement within Section 6.6.1.4 of the CDP which again states that *"The Council will have regard to the Wind Energy Development Guidelines for Planning Authorities (DEHLG, 2006) in relation to the siting and development of wind turbines and the information required as part of a planning application."* We therefore agree with the Draft Direction that EN7 should be removed from the CDP in order to ensure consistency with national policy and specifically department guidance on the development of wind farms. It is contended that it is premature to include a policy such as this in the CDP and that setback distance should be determined in reference to the existing Wind Energy Development Guidelines (2006) and interim department guidance (July 2017) and allow for any changes that may arise when Wind Energy Development Guidelines are ultimately finalised.

BORD NA MÓNA
Naturally Driven

Bord na Móna acknowledge that the development of wind energy projects must afford protection to residential amenity in the areas surrounding wind farms and supports proper planning and sustainable development. It is our view that the most effective way to set setback distances is through the adoption of effective performance criteria and that the existing guidelines have served the planning system, sensitive receptors and the wind energy industry well.

Well-designed wind farms should be located so that noise and shadow flicker is kept to acceptable levels. This will normally be achieved through good design of the turbines and through allowing sufficient distance between the turbines and any existing sensitive development so that noise from the turbines will not normally be significant. The location of turbines should be guided by objective criteria which ensure that sensitive receptors are not exposed to excessive noise and shadow flicker levels. This is very dependent on, for example, the number of turbines, type of turbine, sound power output of the turbine, topography of the site and the nature of the ground and cover on the site in a wind farm development. Endeavouring to be prescriptive about a set-back distance from sensitive receptors may not result in the desired effect as wind turbine technology is continually evolving. Specifying instead a performance criterion, as in the current guidelines, provides a more objective and enduring guideline for developers, planners and sensitive receptors. Maintaining such a criterion will ensure that it is not overtaken by turbine technology but rather will provide a lasting standard that is deemed consistent with protecting residential amenity. Furthermore, it would guide developers to design wind farms in a manner which will ensure achievement of the criterion – a practice widely applied in the industry already. In this context, we believe that the application of an objective performance criterion (as per the existing Wind Energy Development guidelines) is the correct approach.

Replacement of Wind Energy Map

Bord na Móna welcome the requirement that the Wind Energy Map (Map 1.6.5) which is included in both the adopted County Development Plan and the appended Wind Energy Strategy, is removed.

The initial Draft County Development Plan 2017- 2023 map identified Bord na Móna lands in an area straddling the Laois, Tipperary and Kilkenny borders as a *'preferred area'* for wind energy development and in an area located on the northern border of Laois and Offaly as *'open for consideration'*. These classifications recognise the suitability of cutaway peatlands for this type of development. However, it is noteworthy, that there is a large area of Bord na Móna peatland to the west and south west of Portlaoise, known as the Cúl na Móna bog group which has not been included on the map. The lands are of the same nature and land type as the lands designated in the *'preferred'* and *'open for consideration'* areas. Therefore, it is respectfully contended that this area should be included in the *'open for consideration'* classification. This would ensure consistent and appropriate application of the proposed polices in the draft County development plan and also reflect the successful development of these types of sites as referenced in Section 5 'Preferred areas'.

Bord na Móna would also contend that Policy LS35 which is included in *Section 7.19 Landscape* of the CDP, is contrary to national targets for renewable energy generation. The policy which states that it is the policy of the Council to *"Restrict new development [housing, agricultural] to below the 225 metres contour line"* excludes lands above this contour line from future wind energy development. Bord na Móna would like to query the reasoning behind the inclusion of this metric in the CDP. There are a number of windfarms in the state which are located above this contour line. In addition, these areas tend to have lower population densities and a greater available wind resource.

BORD NA MÓNA
Naturally Driven

Therefore, it is our view that this metric should not dictate the preference or non-preference of a suitable windfarm site and the removal of this metric should be reflected in the final version of the Wind Energy Map.

In conclusion, Bord na Móna broadly support the measures proposed in the Notice of Intent to issue a Direction. Notwithstanding our observations on the Wind Energy Map, the implementation of the requirements of the Direction will ensure a better balance between the development of wind energy and the protection of residential amenity as well as ensuring a more consistent approach through the application of the Wind Energy Guidelines (existing and proposed).

We are pleased to have the opportunity to make this submission and would welcome the opportunity to discuss it in more detail.

Yours Sincerely

Sean Creedon

Planning and Environmental Manager

Powergen Development

Fand Cooney,
Ratheniska,
Stradbally,
Co Laois

Date: 24th August, 2017

Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August in relation to the Laois County Development Plan 2017-2023- Draft Ministerial Direction.

Please be advised that the contents will be noted in the Chief Executives Report to the Minister in this regard.

Mise le Meas,

Angela McEvoy
Senior Planner
Planning Section

Submission No. 12

McEvoy Angela

From: fandcooney@gmail.com
Sent: 15 August 2017 15:05
To: Forward Planning
Subject: Submission re. LCC Ministerial Direction
Attachments: FC Submission re. LCC Ministerial Direction.pdf

Dear Sir / madam,

Please can you confirm receipt of this Submission in Response to consultation on:
Laois County Development Plan 2017-2023 – Draft Ministerial Direction

Kind Regards,

Fand Cooney

15th August 2017
Ratheniska, Stradbally, Co. Laois
by email fandcooney@gmail.com

Submission in Response to consultation on:
Laois County Development Plan 2017-2023 - Draft Ministerial Direction

Dear Sir/Madam,

This submission is in response to the Draft Ministerial Direction-Laois County Development Plan 2017-2023.

I request that this full submission is appended to any report prepared by Laois County Council to be forwarded to the Minister.

In the normal course of events, Irish citizens who wish to challenge administrative decisions must go to court (one of the most expensive court systems in the EU), must satisfy the court that they have substantive grounds to challenge the decision, must take the unpredictable risk that substantial court costs will be awarded against them and then must satisfy the ridiculously high bar set by the infamous o'Keeffe principles in order to set aside administrative decisions.

The Minister has been given unaccountable power through section 31 of the Planning and Development Act to bypass the processes that all other citizens must contend with. This power seems devoid of any checks and balances. In essence, it allows the Minister to issue directions which can overturn decisions based merely on 'opinion' (ref. section 31(1) Planning and Development Act as amended.).

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 which should only be taken on the basis of sound evidence and a legally compliant footing.

1. **SEA must be conducted before Wind Energy guidelines can claim to be National policy or to have any legal standing:**

   In ECJ Case C-290/15[1], relating to the requirements of the S.E.A. Directive, the court concluded that: *"54. It follows from all of the foregoing that the answer to the question referred is that Articles 2(a) and 3(2)(a) of Directive 2001/42 must be interpreted as meaning that a regulatory order, such as that at issue in the main proceedings, containing various provisions on the installation of wind turbines which must be complied with when administrative consent is granted for the installation and operation of such installations comes within the notion of 'plans and programmes', within the meaning of that directive."*

   This Judgement, dated 27th October 2016, confirmed that regulatory orders such as the wind energy guidelines are subject to the requirements of the S.E.A. Directive.

   The Minister's Department is well aware of this judgement and it's implications. Note that the objectives of the S.E.A. process are to provide for a high level of protection of the environment and to promote sustainable development by contributing to the integration of environmental considerations into the preparation and adoption of specified Plans and Programmes.

[1] ECJ Case C-290/15 D'Oultremont and Others; http://curia.europa.eu/juris/document/document.jsf?text=&docid=184892&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=419427

On 24th November 2016, in relation to the Wind guidelines, Deputy Simon Coveney, as Minister for Housing, Planning, Community and Local Government[2], advised the Dail that *"there has been a European Court judgment that requires a strategic impact assessment and a public consultation process as part of it in regard to the setting of new guidelines"*.

The Minister's own planning circular PL 5/2017[3] dated 3rd August 2017 confirms that this S.E.A. process has not yet commenced. Indeed, no SEA has ever been completed either for the wind policy or the wind energy guidelines. I'm sure the Minister can get further information on the legal standing of the guidelines from Department of Housing, Planning and Local Government officials Terry Sheridan (Principal, Planning Policy) and Niall Cussen (Principal Adviser, Forward Planning).

Therefore, it appears that this draft Ministerial Direction and process is:

- being taken without proper authority as it is not founded in law given that no legally required S.E.A. 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:
  - to implement a policy that has not been subject to legal due process and
  - to bypass the courts system which is the only avenue available to any others who wish to challenge this decision.

- otherwise contrary to fair or sound administration
  - as it neglects the input of the 7,500 submissions already made to your department in 2013 regarding wind turbine noise/set-back consultations
  - as deciding on the draft Ministerial Direction now places you / your department in a position of being a 'judge in his own cause'. This is contrary to the principles of natural justice. You and your department are not independent in deciding this matter.
  - as it allows the Minister to bypass the courts system which must be used by ordinary citizens if they wish to challenge administrative decisions. Clearly we are not all equal before the law if there are different processes for challenging administrative decisions depending on whether you are a Minister or an ordinary citizen.
  - Ignores the duty of care to citizens in the face of a known risk to health

2. **Current Wind Energy Guidelines are not Fit-for-purpose':**
   On Thursday, 6 October 2016 during Dáil debates, Minister for Energy Denis Naughton stated[4] *"I am as anxious as anybody else to have these new guidelines put in place as the current guidelines are not fit for purpose. Along with the Minister for Housing, Planning, Community and Local Government, Deputy Coveney, my officials and I are actively engaged with this at the moment."*

   Forseeable Risks to Human Health;

   It appears that in April 2014, Mr Frank Gallagher, Planning Section, Dept Environment, Community & local Government was advised of concerns regarding adverse health impacts of

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[2] Dail Debates Thursday 24th November 2016, Questions on promised Legislation-response to Deputy Brian Stanley; http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupdail)/20161124~S?opendocument#S00800

[3] DHPLG Planning circular PL 5/2017 dated 3rd August 2017; http://www.housing.gov.ie/sites/default/files/publications/files/circularletter_pl05-2017_interim_guidelines.pdf

[4] Dáil debates Thursday, 6 October 2016; Questions on Proposed Legislation; https://www.kildarestreet.com/debates/?id=2016-10-06a.69

wind turbines and that *"The limited number of peer reviewed articles and research about the influence of wind turbines on human emotional and physical health requires to be addressed"*.

By 2015, as confirmed by Leo Varadkar, then Minister for Health, Health effects from Wind turbines had still not been assessed as part of government policy. Indeed, it never has been.

Written answers
Wednesday, 13 May 2015

Department of Health
Public Health Policy

Anthony Lawlor (Kildare North, Fine Gael)
Link to this: Individually | In context
162. To ask the Minister for Health further to Parliamentary Question No. 426 of 6 May 2015, if he will confirm with a "Yes" or "No" reply if his Department has undertaken any research to identify any possible negative effects of industrial wind turbines on human health. **[18862/15]**

Leo Varadkar (Minister, Department of Transport, Tourism and Sport; Dublin West, Fine Gael)
Link to this: Individually | In context
As previously advised in my reply of 6 May 2015, policy responsibility with regard to planning and the legislative framework in relation to the siting of wind turbines rests with the Department of the Environment, Community and Local Government and my Department provides advice from time to time when requested by the above mentioned Department. My Department has not carried out any research into the effects of industrial wind turbines on human health.

Within the submissions to the Laois County Development Plan you will see submission number 74. This also contained a supplementary submission from the Irish Doctors Environmental Association which raised serious issues regarding the adequacy of the existing Wind energy Guidelines. The written statement for the CDP includes a response from the chief executive acknowledging that *"there is no express reference to human health or quality of life in Section 4.5 of the current [2006] Wind Energy Guidelines"*[5].

It was also widely reported at the time that a number of families in Cork were forced to move out of their homes due to noise nuisance from Wind Turbines[6]. The. The homes involved were situated within 1km of the windfarm. Clearly the current Wind energy Guidelines which you are attempting to enforce would have done nothing to prevent this situation.

SEAI commissioned RPS consultants to undertake a study on the setback distance for wind turbines as part of the revision of the 2006 guidelines. In 2015, copies of this report was forwarded to your officials in the Department of the Environment. Table 3.2 of the report shows that an estimated setback distance of 1209m (i.e. 1.2 km) would be the absolute minimum distance necessary to meet the 40dB absolute noise limit proposed in the draft revision of the Wind Guidelines.

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[5] Stage 2 Consultations - Chief Executive's Report on Review of the CDP 2017-2023

[6] High Court case 2011-9955-P, Enercon Wind Farm Services Ireland Ltd. admitted liability, settled in April 2017

However, this is likely to be insufficient protection according to an article published on 12th May 2017 by Alun Evans[7] which concludes *"All the available evidence indicates that an important minority of local inhabitants is severely impacted by noise emitted by wind farms sited too close to their homes. This degree of Collateral Damage is too large to accept in terms of Utilitarianism. Public Health must exercise the Precautionary Principle and retain as much independence from government as possible in assessing the health effects of national policies. The Health and Human Rights of rural-dwelling citizens are every bit as important as those of the rest of society. In fact, in terms of wind energy, the overall benefit is fairly modest [113] [114] and the adverse effect on people's health is far from small. It is essential that separation distances between human habitation and wind turbines are increased. 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"*

So, 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:

- Chief Executive's response to submission no 69 submission by Department of Housing, Planning, Community & Local Government, Stage 2 Consultations - Chief Executive's Report on Review of the CDP 2017-2023: "with an energy output equivalent of c 82 MW which by industry norms would supply the energy consumption requirements of c. 114,000 no. households which is well in excess of the population of County Laois. " and

- Laois County Council's evidential assessment of the county using 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" (ref. page 22, Appendix 5: Wind Energy Strategy, Laois County development Plan 2017-2023). Thus leaving only sub-optimal locations.

- Documented statements that Laois are developing other mechanisms to support renewable energy and climate change commitments i.e. "Laois County Council is committed to the preparation of a holistic Local Authority Renewable Energy Strategy [LARES] during the lifetime of the new County Development Plan 2017-2023." (ref. Energy and Communications Objective OBJ1, Volume 1-Written Statement, Laois County Development Plan 2017-2023)

- 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.

The question that really needs to be asked is why you are issuing this draft direction, given the evidence available concerning risks to health and the many members of your Department who are fully aware of the legal and health issues associated with the shortcomings in the guidelines. Your actions appear to be focussed on protecting the interests of the wind industry and ignoring the rights of Irish Citizens and environmental protection. In my view, that is a highly inappropriate use of the section 31 powers and probably amounts to maladministration.

Given the facts listed previously, the Minister has some nerve issuing such a direction to Laois County Council. The basis of his Direction is that selected aspects of the County Development

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[7] Evans, A. (2017) Environmental Noise Pollution: Has Public Health Become too Utilitarian? Open Journal of Social Sciences, 5, 80-107. https://doi.org/10.4236/jss.2017.55007; Centre for Public Health, Queen's University Belfast,

Plan relating to Wind Energy are not in compliance with the requirements of the Planning and Development Act because they deviate from the Wind Energy Guidelines 2006.

Given all the issues raised above, it is clear that:

- there is a known negative environmental and health risk associated with development of industrial wind turbines.
- It is known that the current wind energy guidelines do not address this risk.
- The Precautionary Principle underpinning the principles of the European Union requires that such foreseeable risks be addressed as does Irish law.
- It is known that the current guidelines and wind energy policy do not comply with International law, European law or Irish law. Therefore the Wind Energy Guidelines cannot be considered as complying with the purpose of the PDA as quoted in the short text of the Act i.e. "*TO PROVIDE, IN THE INTERESTS OF THE COMMON GOOD, FOR PROPER PLANNING AND SUSTAINABLE DEVELOPMENT*".

and yet, the Minister and his officials are in the process of directing Laois County Council to comply with these flawed Wind Energy Guidelines.

I ask whether the Minister or his officials will be obtaining financial loans secured against their own personal assets in order to offset any costs to Irish citizens arising from defending this ill-conceived direction? The Minister should take note that these unfounded Wind Energy Guidelines have caused and are continuing to cause significant adverse effects on citizens living in rural Ireland.

Based on all the above, I ask that the Minister retracts his draft Ministerial Direction against the Laois County Development Plan.

Yours Sincerely,

Fand Cooney