

Mr Paul Gallagher,
Energy Programme Manager,
Coillte,
Dublin Road,
Newtownmountkennedy,
Co Wicklow

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

McEvoy Angela

From: Kiely Donal
Sent: 15 August 2017 17:28
To: Paul Gallagher
Cc: McEvoy Angela
Subject: RE: Laois County Development Plan 2017 – 2023 Draft Ministerial 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



From: Paul Gallagher [mailto:Paul.Gallagher@coillte.ie]
Sent: 15 August 2017 14:21
To: Forward Planning
Cc: Paul Gallagher
Subject: Laois County Development Plan 2017 – 2023 Draft Ministerial Direction

Dear Sir / Madam,

Please find attached the Coillte submission on the Laois County Development Plan 2017 – 2023 Draft Ministerial Direction pursuant to the public notice inviting observations and comments from interested parties.

Best Regards,

Paul Gallagher

Wind Energy Programme Manager | Coillte

E Paul.Gallagher@coillte.ie
M +353 87 1155275

www.coillte.ie

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McEvoy Angela

From: Paul Gallagher [Paul.Gallagher@coillte.ie]
Sent: 15 August 2017 14:21
To: Forward Planning
Cc: Paul Gallagher
Subject: Laois County Development Plan 2017 – 2023 Draft Ministerial Direction
Attachments: Coillte Submission on S.31 Ministerial Direction to LCC 15082017.pdf

Dear Sir / Madam,

Please find attached the Coillte submission on the Laois County Development Plan 2017 – 2023 Draft Ministerial Direction pursuant to the public notice inviting observations and comments from interested parties.

Best Regards,

Paul Gallagher

Wind Energy Programme Manager | Coillte

Paul.Gallagher@coillte.ie
M +353 87 1155275

www.coillte.ie

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Handwritten marks or scribbles in the top right corner.



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

By e-mail to: devplan@laoiscoco.ie
Our Ref.: CLS_LCC_LTR_338
Date: 15th August 2017

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

Dear Sir/Madam,

Coillte welcomes the opportunity to make this further 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 by 4pm on Tuesday 15th August 2017.

As per earlier submissions made by Coillte during the development of the Laois County Development Plan 2017 – 2023 (the "Laois CDP"), Coillte is deeply committed to complying with National Government 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 targets¹ and considerable effort is needed by all citizens to meet the significant challenges in front of us.

Coillte is disappointed that Laois County Council, in adopting the Laois County Development Plan 2017-2023, has pursued a path dramatically at odds with the previous submission made by Coillte. 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 Co. Laois. It is unclear to Coillte 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").

Coillte 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. Coillte 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.

¹ Refer to previous Coillte Submission from May 2017: "Coillte Submission to Laois CDP 05.05.2017"

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").

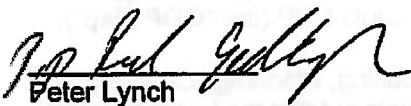
The proposed s.31 Map will have the effect of:

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. Reducing Coillte's future development potential of its forested lands for wind development by in excess of 85% (from over 100MW to below 20MW) when compared with Laois County Development Plan 2011-2017;
3. 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 wind energy development and in cascading key national policies to the local level. Coillte 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 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.

Yours sincerely,



Peter Lynch
Director of Asset Development
Coillte Land Solutions

Mr Simon Carleton,
Project Planner,
Galetech Energy Services,
Clondargan,
Stradone,
Co Cavan

Date: 24th August, 2017

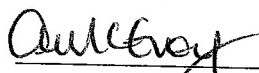
Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 15th August, on behalf of your client Pinewood Wind Limited, 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. 11

McEvoy Angela

From: Kiely Donal
Sent: 15 August 2017 17:29
To: Simon Carleton
Cc: McEvoy Angela
Subject: RE: Laois County Development Plan 2017-2023 - Draft Ministerial 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



From: Simon Carleton [mailto:simon@galetechenergy.com]
Sent: 15 August 2017 14:45
To: Forward Planning
Subject: Laois County Development Plan 2017-2023 - Draft Ministerial Direction
Importance: High

To whom it may concern,

Please find attached a submission to the 'Laois County Development Plan 2017-2023 – Draft Ministerial Direction'. This submission has been prepared on behalf of our client, Pinewood Wind Limited, pursuant to the public notice inviting observations and comments from interested parties.

Kind regards,

Simon Carleton
Project Planner

Galetech Energy Services
Clondargan,
Stradone,
Co. Cavan,
Ireland.
H12 NV06.

Email: simon@galetechenergy.com
Tel. +353 (0) 49 555 5050
Mobile. +353 (0) 86 365 1619
Skype. simon.carleton1

www.galetechenergy.com

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Galetech Energy Services
Clondargan
Stradone
Co. Cavan
Ireland
H12 NV06

Forward Planning Department,
Laois County Council,
Aras an Chontae,
James Fintan Lalor Avenue,
Portlaoise,
County Laois
R32 EHP9

15th August 2017
Our Ref: 5220/S.31 Sub
By Email: devplan@laoiscoco.ie

Dear Sir/Madam,

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

Introduction

On behalf of our client, Pinewood Wind Limited, we wish to make the following submission to the '*Laois County Development Plan 2017- 2023 – Draft Ministerial Direction*'. This submission has been prepared pursuant to the public notice inviting observations and comments from interested parties.

In the first instance, our client welcomes the Minister's notification to Laois County Council of his intention to issue a Direction, pursuant to Section 31 of the Planning and Development Act 2000 (as amended), in respect of the wind energy policies contained within the adopted Laois County Development Plan 2017-2023.

However, our client has significant outstanding reservations as to both the form and substance of the revised map included by the Minister in the Draft Section 31 Direction at Appendix 2 and which he proposes to reinsert into the adopted 2017-2023 Development Plan. In our view, the revised map suffers from precisely 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. In our respectful submission, if the Minister proposes to dramatically 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 only on the basis of objective factors. We therefore welcome this opportunity to make a submission in respect of same.

Galetech Energy Services
Clondargan
Stradone
Co. Cavan
Ireland
H12 NV06

Tel: +353 (0) 49 555 5050
Fax: +353 (0) 49 555 3065

Galetech Energy Services. Registered in Ireland: 352304
Registered Office: Greaghcotta, Tullyco, Cootehill, Co. Cavan, Ireland

As we have stated in our previous submissions to both the Draft Plan (see **Annex 1**) and again to the Proposed Amendments/Material Alterations to the Draft Plan (see **Annex 2**), the entire process for the identification and designation of appropriate locations for wind energy development within the adopted 2017-2023 Development Plan is flawed and devoid of any evidential basis. As is required by law, 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. We note that, for reasons that do not need to be rehearsed here, both the Chief Executive Officer and the Minister fully concurs with our client's position 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.

However, to date 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. Consequently, and while supporting the general thrust of the Minister's proposed intervention, it is of very significant concern to our client that we note that the Draft Section 31 Direction also includes a requirement for the reinsertion of the 'Original Wind Energy Map 1.6.5' into the adopted 2017-2023 Development Plan. In our client's view this would simply amount to the replacement of one map drawn without a proper evidential basis with another map drawn without a proper evidential basis.

In particular, our client notes with significant concern, that 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. This evidential deficiency is even more striking in that it was many of these locations (outside the Slieve Bloom mountains) that were identified in the previous 2011-2017 Development Plan as exactly the locations which were appropriate for wind energy development. In our respectful submission, if the 2017-2023 Development Plan is to undergo such a dramatic *volte face*, with serious implications for committed wind energy development projects and the State's binding commitments to meeting renewable energy targets, it cannot do so in the arbitrary and irrational fashion. For the avoidance of doubt, in our client's view 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.

Pinewoods Wind Farm

As set out in our original submission to the Draft Plan, our client 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). Our client brought forward this planning

application, which constitutes a very significant investment of time and financial resources, precisely on the basis of the very favourable designations for the subject lands included in the 2011-2017 Development Plan. The reasons as to why this location was formerly designated by the Planning Authority as one of the 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.

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 for our client's lands has been completely reversed to 'Areas Not for Consideration' (See **Annex 3**). It is fully 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. We have examined the adopted 2017-2023 Development Plan in considerable detail, including the Wind Energy Strategy, Landscape Character Assessment and Strategic Environmental Assessment (SEA) together with all of the supporting reports and documents, and can identify no proper substantive justification whatsoever as to why the designation of our client's lands in respect of wind energy development has been completely reversed.

Indeed, as per the 2011-2017 Development Plan, our client's lands continue to be included in the Landscape Character Assessment as Landscape Character Type (LCT): 'Type 1: Hills and Upland Areas' i.e. the landscape characterisation of our client's lands has not been altered in the adopted 2017-2023 Development Plan. Yet, while the 2011-2017 Development Plan made reference to wind energy being considered in the LCT – Type 1, this reference has been simply deleted from the 2017-2023 Development Plan without any further explanation or justification. It is simply impossible to definitively read out of the entire suite of documents comprising the adopted 2017-2023 Development Plan, any planning-based rationale whatsoever as to why lands previously designated as amongst the four most appropriate locations for wind energy development within County Laois are no longer considered appropriate. 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 and which require the Planning Authority to consider, through an evidence based technical and mapping analysis, such planning-based factors as, *inter alia*, wind speed, landscape sensitivity, ecological designations, tourism and grid infrastructure. While each of these criteria is listed in the 2017-2023 Development Plan (Appendix 5 – Wind Energy Strategy) there is no evidence which (if any) of these factors were actually considered or how these criteria were applied to arrive at the various spatial designations for wind energy development included in the 'Original Wind Energy Map 1.6.5' and which are so radically different to the designations in the previous 2011-2017 Development Plan.

Therefore, and having regard to the Minister's stated intention to reinsert the 'Original Wind Energy Map 1.6.5' into the 2017-2023 Development Plan, we would remind the Minister that he too, in the performance of his functions under the Act, is bound by precisely the same legal obligations as apply to Laois County Council in respect of proper planning and sustainable development. It follows, in our respectful submission, that any map which the Minister seeks to reintroduce into the adopted 2017-2023 Development Plan must also be fully underpinned by a proper evidential basis in accordance with national policy and guidelines.

Next Steps

While the replacement of one map, banning wind energy development, with another map, which appears to allow for some wind energy development, may seem superficially attractive, the Minister has no power to require the reinsertion of a map which, in itself, is incoherent, inconsistent and in direct contravention with national policy and flatly contrary to the legal obligations of the Planning Authority.

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, pursuant to Section 28(1)(A) and 28(1)(B) of the Act, presents an analysis to the Minister as to how it has implemented the statutory 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.

Conclusion

The 2017-2023 Development Plan has a vital role to play in establishing the land-use planning and regulatory framework for renewable energy within a cascading hierarchy of energy and climate policies from national to local levels. If Ireland is to achieve its binding commitments, including the legal requirements now also instituted pursuant to the Climate Change and Low Carbon Development Act 2015, it is imperative the Minister acts to protect the integrity of the planning process and the application of the correct procedures and criteria, such that long-term policy certainty is provided to maintain and stimulate investment in appropriately located renewable energy technologies. Our client therefore supports the Draft Section 31 Direction save that the 'Original Wind Energy Map 1.6.5' should not be reinserted into the adopted 2017-2023.

Instead, the Planning Authority should be directed to recommence the entire process of preparing the wind energy strategy (including relevant maps) and, unless proper justification and planning-based evidence can be provided to the contrary, all of the designations for 'Preferred Areas' and 'Areas Open for Consideration' for wind energy development included within the 2011-2017 Development Plan should be fully maintained within the 2017-2023 Development Plan.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Darren Sherry", written over a horizontal line.

Darren Sherry

Director

for and on behalf of

Galetech Energy Services Ltd.

**Annex 1 -
Submission to Draft Laois County
Development Plan 2017 - 2023**



Galetech Energy Services Ltd.
Clondargan
Stradone
Co. Cavan
Ireland

Senior Planner
Planning Section,
Laois County Council,
Aras an Chontae,
JFL Avenue,
Portlaoise,
Co. Laois

4th October 2016

Our Ref: 5220/Draft CDP Sub

Dear Sir/Madam,

Re: Draft Laois County Development Plan 2017-2023

Introduction

On behalf of our client, Pinewood Wind Limited, we wish to make the following submission to the Draft Laois County Development Plan 2017-2023.

The production of energy from renewable sources is one of the most important current national policy priorities. Ireland is presently subject to two mandatory EU targets to achieve 16% of total final energy consumption from renewable sources and a 20% reduction in greenhouse gas emissions by 2020. Beyond 2020, Ireland will be subject to higher renewable energy targets of up to 27% and a 40% reduction in greenhouse gas emissions by 2030. In line with these commitments, the current National Renewable Energy Action Plan (NREAP) includes a 40% target for electricity generation to be achieved from renewable sources (RES-E). Nationally, it is estimated that between 3,500 and 4,000 MW will be required to meet the 2020 NREAP target, meaning an approximate doubling of current installed capacity.

In energy planning terms, 2020 is rapidly approaching. Onshore wind energy offers the most cost-competitive and viable technology for achieving binding national targets within this rapidly shortening timeframe. Ireland has one of the most advantageous wind resources in Europe, which can produce indigenous renewable electricity while reducing greenhouse gas emissions. Given Ireland's binding commitments, and also looking at energy security challenges beyond 2020, it is absolutely imperative that every local authority contributes to national efforts and maximises the opportunities to develop its wind resources within its jurisdiction, recognising that these offer rich potential over the coming decades.

Compliance with National Policy

Our client welcomes the recognition that County Laois has the potential to harness wind energy, which is rightly identified as a valuable resource. However, the Draft Wind Energy Strategy contravenes national policy on a number of significant points.

Galetech Energy Services
Clondargan
Stradone
Co. Cavan
Ireland
Tel: +353 (0) 49 555 5050
Fax: +353 (0) 49 555 3065

Galetech Energy Services. Registered in Ireland: 352304
Registered Office: Greaghcotta, Tullyco, Cootehill, Co. Cavan, Ireland

Firstly, the Draft Wind Energy Strategy proposes that wind turbines to be erected must be a minimum distance of 1.5 kilometres from schools, dwellings, community centres and all public roads. This is evidently in conflict with the DoEHLG 2006 Wind Energy Development Guidelines, which do not impose a mandatory separation distance between wind turbines and nearby receptors. Not only does this proposed setback distance contravene national policy, its implementation would essentially lead to a sterilisation of County Laois from future wind energy developments. **Figure 1** below represents the land take which would remain available for wind energy developments if such a policy were introduced at national level.

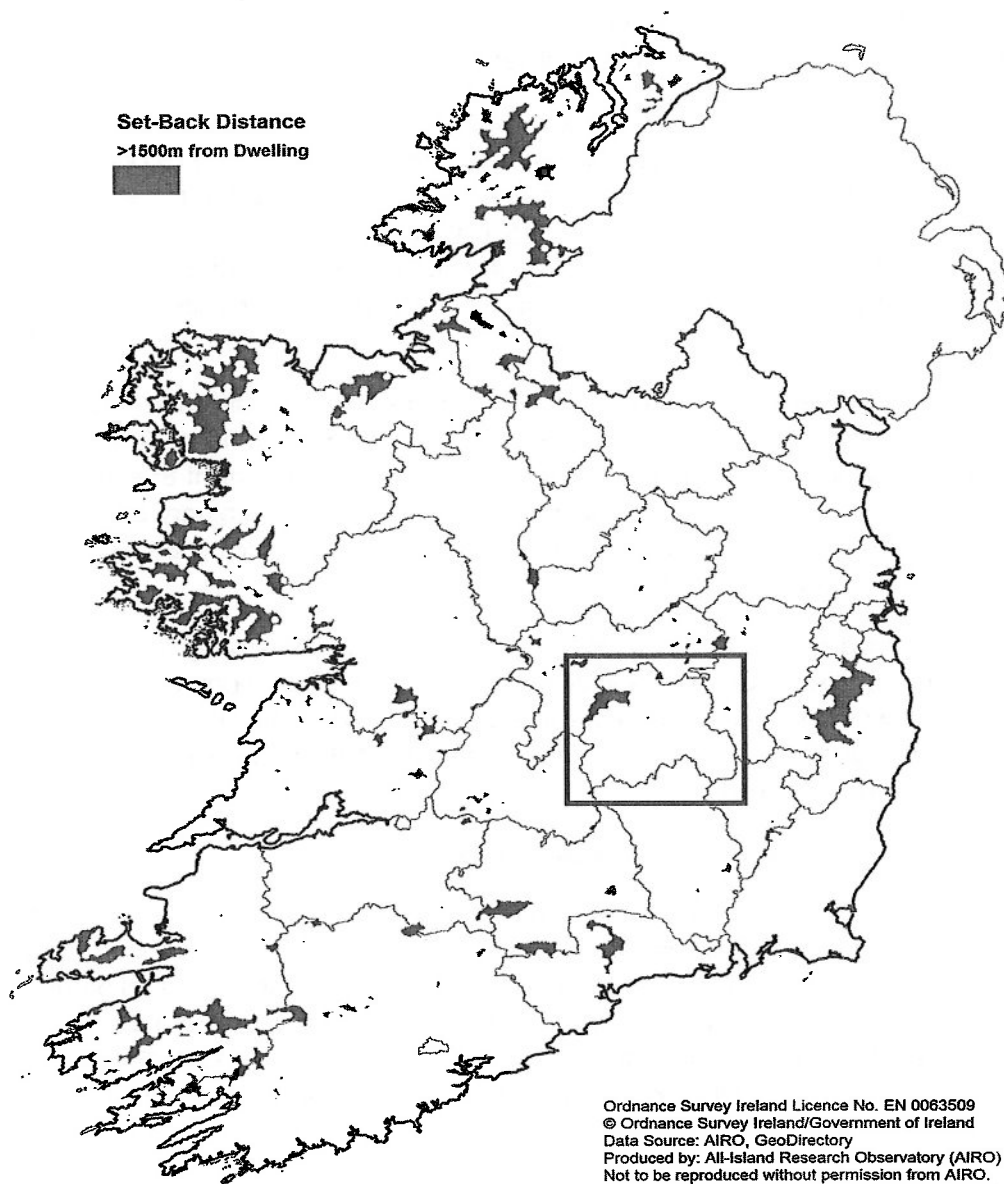


Figure 1: Land-take available for wind energy development following the imposition of a 1.5km setback

It is noteworthy that the remaining land resource for wind energy development within County Laois is largely comprised of the Slieve Bloom Mountains, which are subject to SAC and SPA designations; and have been classified as 'Areas Not Open for Consideration' as part of the Draft Wind Energy Strategy 2017-2023. Our client considers it essential that the planning authority and elected representatives adopt a plan which is consistent with national policy, ministerial guidelines and Section 28 of the Planning and Development Act 2000, as

amended. This is crucial in order to provide progressive and sustainable measures to combat climate change and provide for future energy requirements.

Significantly, it is noted that the SEA Environmental Report for the Draft Laois CDP 2017-2023, which was carried out an external consultant, outlines that

'It is noted that Objective EN7 includes a requirement for 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' which would limit Laois County Council's ability to contribute towards the National Renewable Energy Action Plan target of 40% of electricity demand to be provided by renewable energy by 2020. In addition, the distance specified is not consistent with Government policy on the issue.'

Our client would like to reiterate that the setting of such a separation distance under any future County Development Plan (CDP), would cut across and undermine Government policy to deliver more indigenous renewable energy and reduce our current 85% imported fossil fuel dependency. Ruling out what could be suitable sites on an arbitrary basis could hinder our ability to meet the ambitious, but necessary and legally binding EU renewable energy and EU climate change commitments.

Secondly, the Draft Wind Energy Strategy proposal that all wind monitoring masts require planning permission is a direct contravention of the Planning and Development Regulations 2001 (as amended), which states; under Schedule 2, Part 1, Class 20A; that masts for the mapping of meteorological conditions are considered exempt development, subject to a number of conditions and limitations.

De-Classification of 'Preferred Areas' for Wind Energy

On the basis of the 2011-2017 Wind Energy Strategy, our client has developed detailed proposals for an 11 no. turbine wind farm on lands which are identified as 'Preferred Areas' and 'Areas Open for Consideration' in the townlands of Gaignahown, Knockardugar, Boleybawn, Ironmills (Kilrush) and Garrintaggart in south County Laois. A planning application based on the above proposals was submitted to the Planning Authority on 30/05/2016, and is currently the subject of a request for further information. A response to this request is currently being prepared.

The proposed wind farm has been designed to fully comply with national, regional and local energy and planning policies and is expected to produce 110GWh of electricity every year which will provide clean energy for almost 20,000 homes, and will prevent over fifty thousand tonnes of CO₂ per year from being released into the atmosphere. In accordance with the Development Plan Guidelines for Planning Authorities (2007) and the SEAI's Methodology for Local Authority Renewable Energy Strategies (2013), the proposed development will also maximise efficient public investment in infrastructure through making use of the permitted Laois-Kilkenny Reinforcement Project (An Bord Pleanála PL11.VA0015). As detailed in Appendix 5: Wind Energy Strategy of the Draft Laois CDP 2017-2023, this area is to be classified as 'Areas not for Consideration'

The development of renewable energy infrastructure is a long term investment with a long lead time and which requires policy certainty. In accordance with the SEA process and the principles of evidence-based planning, the Planning Authority must provide a justification as to why a location which was considered suitable for wind energy in the current development plan is no longer considered so. Following a detailed assessment of the draft Wind Energy Strategy, the SEA Environmental Report for the Draft Laois CDP 2017-2023, and Section 6 of the Draft Laois CDP 2017-2023 Volume 1: Written Statement; it is noteworthy that a detailed explanation has not been put forward outlining the reasoning behind the changes in classification. Furthermore, the Landscape Character Type (LCT) within which the subject site is located has not been altered; with the LCT being identified as 'Hills and Upland Areas'. It is logical, therefore, that when the subject site was considered a 'Preferred Area' under the current CDP, and the LCT has not been altered under the subsequent draft CDP, the site should remain as a 'Preferred Area' for wind energy development.

Conclusion

The Laois County Development Plan 2017-2023 has a vital role to play in establishing the land-use planning framework for renewable energy and in cascading key national energy and climate policy priorities to the local level. If Ireland is to achieve its binding commitments, it is absolutely essential that long term policy certainty is provided in order to maintain and stimulate investment in appropriately located renewable energy technologies. For this reason, our client submits that all of the current designations for 'Preferred Areas' and 'Areas Open for Consideration' for wind energy in County Laois should be fully maintained in the Laois County Development Plan 2017-2023, and that the imposition of a mandatory 1.5km setback from dwellings and other receptors be removed to ensure complete and absolute conformity with the Wind Energy Development Guidelines for Planning Authorities (2006) and the SEAI's Methodology for Local Authority Renewable Energy Strategies (2013).

Yours sincerely,

Simon Carleton

Simon Carleton

Project Planner

for and on behalf of

GES Ltd.

**Annex 2 –
Submission to Proposed Amendments/Material Alterations to the
Draft Laois County Development Plan 2017 – 2023**



Galetech Energy Services
Clondargan
Stradone
Co. Cavan
Ireland
H12NV06

Forward Planning Department,
Laois County Council,
Aras an Chontae,
JFL Avenue,
Portlaoise,
Co. Laois
R32 EHP9

By email to: cdp@Laoiscoco.ie

5th May 2017

Our Ref: PIN001LCDP_SUB

Dear Sir/Madam,

Re: Draft Laois County Development Plan 2017-2023 (Amendments/Material Alterations)

On behalf of our client, Pinewood Wind Limited, we wish to make a submission to the proposed Amendments/Material Alterations to the Draft Laois County Development Plan 2017-2023.

Our client notes, and welcomes, Material Alteration Ref. Section No. 6 - No. 22 (Pg.118, Sub-Section 6.6.1.4) which sets out the Planning Authority's approach to wind energy development. Taken on its own, it purports to inform developers, landowners and the public of the most appropriate sites for the location of wind energy developments, including 'Preferred Areas', 'Areas Open for Consideration' and 'Areas Not [Open] for Consideration' in accordance with the *Wind Energy Development Guidelines for Planning Authorities 2006*. We further note and welcome Material Alteration Ref. Section 6 - No. 18 (Pg.116, Sub-Section 6.6.1) which recognises the considerable benefits for human health and ecosystems, including significant economic and employment benefits at local to national levels, of harnessing renewable energy resources.

However, in our view, these positive Amendments/Material Alterations are set entirely at naught by the minimum setback requirements, previously included as part of Policy EN7 in the Draft Plan. As illustrated on the proposed amended Map 1.6.5 (Material Alteration Ref. Section No. 6 - No. 24 (Pg.118, Sub-Section 6.6.1.4)), the imposition of these minimum setback distances constitutes a *de facto* ban on wind

Galetech Energy Services
Clondargan, Stradone
Co. Cavan, H12NV06
Ireland
Tel: +353 (0) 49 555 5050
Fax: +353 (0) 49 555 3065

Galetech Energy Services. Registered in Ireland: 352304
Registered Office: Greaghcotta, Tullyco, Cootehill, Co. Cavan, Ireland

energy developments within County Laois. As a consequence, the proposed amended Draft Plan, taken in its entirety, is internally incoherent, inconsistent, and is in direct contravention with national policy and (if adopted) would be wholly contrary to the legal obligations of the Planning Authority.

We note that a number of previous recommendations on proposed amendments to the Draft Plan in relation to wind energy development included in the *Chief Executives Report on Issues arising from Stage Two Consultation* were not accepted by the elected members. However, we respectfully submit, that it is the Chief Executive's responsibility to only give effect to the lawful directions of the elected members. As confirmed in *P.J. Farrell & Anor -v- Limerick County Council*, ([2009] IEHC 274), the Chief Executive has the power to treat a resolution as invalid where the elected members have ignored the Planning Authority's expert advice to the extent that a policy would be contrary to proper planning and sustainable development of the area.

Equally, the Chief Executive is obliged to discount such a resolution where the elected members fail to outline any proper planning-based reason for rejecting expert advice. Indeed, the elected members, in exercising their reserved functions under the Act, are restricted solely to considering the proper planning and sustainable development of the area; the statutory obligations of the Planning Authority; and any relevant policies or objectives for the time being of the Government. They are not permitted to go outside that remit and are constrained from making decisions predicated upon considerations extrinsic to those three matters. There is nothing on the public record to indicate that the elected members took due regard of these matters and the Chief Executive (per *Child v Wicklow County Council* [1995] 2 IR 447) has no jurisdiction to accept such unlawful directions and is required to reject them of his own motion.

In this context, we note the submission of the Minister to the Draft Plan which unequivocally advised that a ban on wind energy development within County Laois is in clear breach of both Government policies on renewable energy and the provisions of the statutory *Wind Energy Development Guidelines for Planning Authorities 2006*, published pursuant to Section 28 of the Act. As clearly advised in the Minister's submission, the positive objectives in the Draft Plan supporting wind energy development are clearly at odds with Policy EN7. They are further plainly at odds with settled Government policy which proactively supports the development of wind energy infrastructure at appropriately sited locations.

The Minister has further advised that there is an explicit statutory obligation on the Planning Authority to support the implementation of national government policy in its statutory development plan. In fact, in December 2013 the Minister issued Circular PL20-13 expressly advising the Planning Authority to defer amending their existing wind energy policies, particularly in a manner which would unnecessarily and unreasonably fetter wind energy development, until such time as the current review of the statutory *Wind Energy Development Guidelines for Planning Authorities 2006* is complete. Accordingly, the Minister's submission makes it abundantly clear that the *de facto* ban of wind energy development in County Laois, as proposed by the elected members, is flatly in contradiction with their obligations under the Act.

The provisions of the Draft Plan, taken in their entirety, are also entirely contrary to the obligation of the Planning Authority under Section 15 of the Climate Change

and Low Carbon Development Act 2015. In particular, the Planning Authority is obliged to have regard to the transition objective and “mitigating greenhouse gas emissions” in the discharge of all its functions. There is no evidence that the elected members had any regard to this obligation and it is difficult to square the banning of wind energy development with the legal requirement to mitigate greenhouse gas emissions.


We further note that the Strategic Environmental Assessment (SEA), mandated under national and EU law as a critical part of the evidence-based rationale for the Draft Plan, includes no proper planning-based reasons for including amended Map 1.6.5 in the Draft Plan. Indeed, the SEA Screening Report on the proposed Amendments/Material Alterations, notes at Page 35 (in respect of the amended Map 1.6.5), that the proposed provisions of the Draft Plan, taken in their entirety, will severely limit the ability of the Planning Authority to contribute towards the National Renewable Energy Action Plan target of 40% of electricity demand to be provided by renewable energy by 2020 and, therefore, are neither consistent with Government policy nor the Planning Authority’s obligations under law.

Accordingly, we submit that the Draft Plan fails to set out an overall strategy for the proper planning and sustainable development of the area; is not in compliance with the requirements of the Act; has ignored, or has not taken sufficient account of submissions or observations made by the Minister; and has not provided any proper planning-based rationale for the proposed amended Map 1.6.5 (pursuant to policy EN7). It is therefore fully open to the Chief Executive to treat the decision to ignore the expert planning and Ministerial advice as invalid and to strike-out Map 1.6.5 and, furthermore, to refuse to give effect to the unlawful directions of the elected members. In this regard we note the Minister’s expressed intention to intervene under Section 31 of the Act if the Draft Plan is adopted by the Chief Executive. While our client welcomes that intention, such an intervention would be rendered unnecessary if the Chief Executive adopts the robust and pragmatic position of simply disregarding the unlawful resolutions as *ultra vires* the powers of the elected members. We further submit that the Chief Executive should recommend triggering the provisions of Section 12(10) of the Act to remove Policy EN7 from the Draft Plan. We submit that, given the internal inconsistencies in the Draft Plan described above, such a further modification would not be material such as to activate Section 12(10)(c) of the Act. Indeed, such a provision will clearly have an overall positive effect on the environment.

The Laois County Development Plan 2017-2023 has a vital role to play in establishing a positive land-use planning framework for renewable energy production within a cascading hierarchy of key national energy, climate and planning policy priorities. Government policy is clear - Ireland’s best short-to-medium-term prospects to rapidly decarbonise energy production and to meet our present and emerging renewable energy targets is from onshore wind energy. The *Wind Energy Development Guidelines for Planning Guidelines 2006* are also very clear that the Planning Authority must prepare and adopt policies which will maximise the contribution that wind energy can make to meeting overall binding commitments. If Ireland is to achieve these obligations, it is absolutely essential that long-term policy certainty is provided in order to maintain and stimulate investment in appropriately located and scaled renewable energy technologies.

In conclusion, we request that all of the current designations for 'Preferred Areas' and 'Areas Open for Consideration' for wind energy in County Laois should be fully maintained in the Laois County Development Plan 2017-2023, and that the imposition of a mandatory setback distances pursuant to Map 1.6.5 (further to policy EN7) be removed from the Draft Plan to ensure the internal coherence of the Draft Plan and complete and absolute conformity with national laws and policies on renewable energy and greenhouse gas abatement.

Yours sincerely,



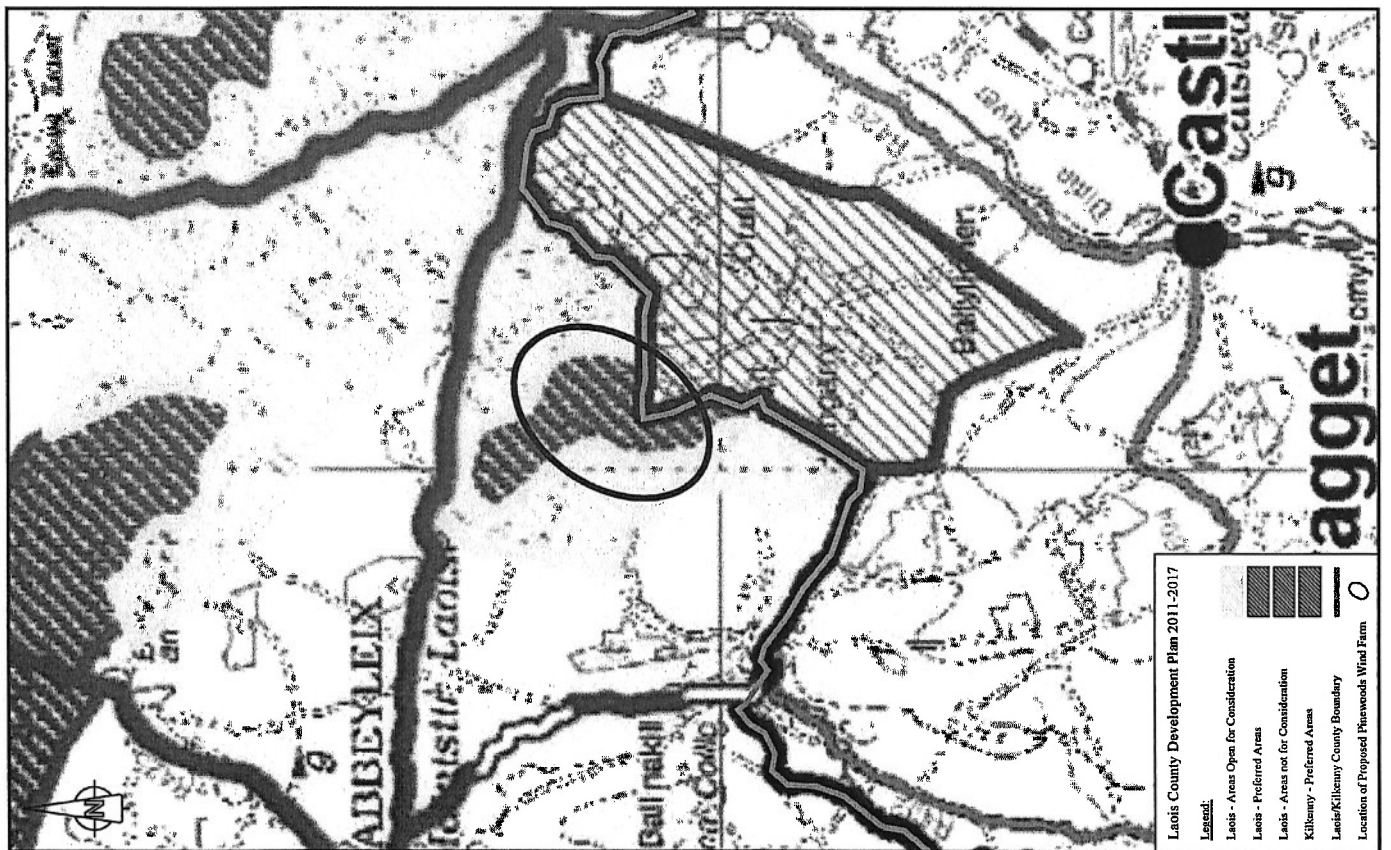
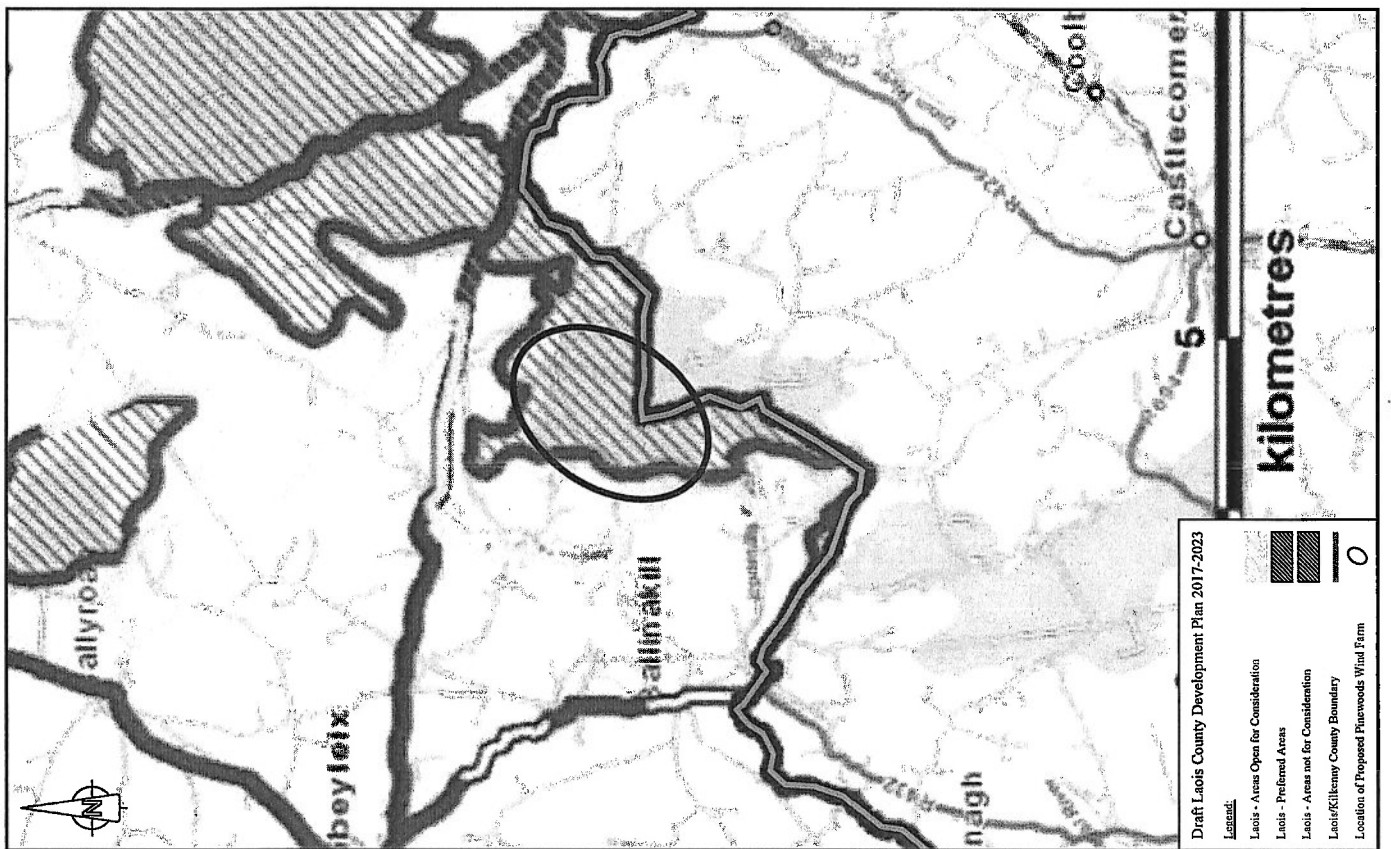
Darren Sherry

Director

for and on behalf of

Galetech Energy Services Ltd.

**Annex 3 –
Location of Pinewoods Wind Farm**



Date Recd.	Presented	Drawn by:

GALETECH ENERGY SERVICES
 Global Energy Services
 Shangan
 Co. Cork

Pinewoods Wind Ltd

Pinewoods Wind Farm

Location of Turbines within Designated Areas

Drawn by:		Location No:	
			00
Scale:	(A3) 1:75,000	Date:	14/08/2017
Drawn by:		Checked by:	
J.B.		S.C.	
		Confirmed by:	
			G.L.

Mr Ray Conroy,
Coolroe,
Ballybrittas,
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. 9

McEvoy Angela

From: ray conroy [raytconroy@gmail.com]
Sent: 15 August 2017 14:20
To: Planning Dept; McEvoy Angela
Subject: submission on draft ministerial direction for Laois CDP
Attachments: submission on ministers draft direction CDP..docx

Please find attached a submission on ministerial directive .
Please ensure that submission is appended to any report that is sent to the minister in relation to this matter.
Please acknowledge receipt of this submission,.

thanking you in advance.

ray conroy

Submission on draft ministerial Direction to Laois C.D.P.

15/08/2017

Attn: Angela McEvoy.

Senior planner.

Laois Co.CO.

A Chara,

It is frankly insulting and totally 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.

If the minister could be bothered to read the minutes of the meetings held in public at county hall, he would soon see that, if anything, Laois county councillors devoted a huge amount of time and discussion to the ministers opinions, as well as to the opinions of all other bodies, private and corporate who made submissions on the content of the Laois County Development plan. His directive to remove the text in policy EN7, and to amend the map 1.6.5 is based on a false assumption of his behalf, and possibly ignorance of due process, and the purpose of submissions been open for discussion by interested parties . His opinion was given due attention, but counter arguments by the opinions of others, from submissions and individual councillors , who had the foresight to read and examine all received submissions, were found to be stronger and more in keeping with the purpose of the C.D. P . The mission statement for C.D. P states as it objective that the plan

“be a cohesive and sustainable community of people enjoying distinct but interrelated urban and rural environments’ and its aspirations to protect our unique environment, and affording all inhabitants of our county the ability to live , work and enjoy safely , and as equals said environment , without compromising the environmental integrity of our county”

Mindful of the fact , that the C.D.P is underpinned by an SEA, and that the proposed zoning of areas as ‘suitable for wind farms’ was based on GRS methodology , in conjunction with SEAI’s Wind atlas, it is correct that Laois councillors came to their decision as to what and where is suitable for wind farms. The scoping exercise for areas suitable for wind farms came to the conclusion that there are no areas within Laois county that are eminently suitable for windfarm development, using the criteria as laid down by the SEAI, an organisation that is funded and ‘overseen’ by the government .

'Areas deemed eminently suitable for windfarm development and reserved for such purposes. Applies to useable areas that have economically viable wind speeds, have no designations, are sparsely populated, are in close proximity to a grid connection and have the ability to absorb wind development.

It is considered that there are no such areas in County Laois.'

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. The scoping mechanism used by Laois planners clearly states that no such areas exist.

Laois councillors were also aware of the fact that the current NREAP, is not underpinned by a legally required SEA, this point has been admitted to by ministers on Dail record, and a process has been initiated to commence a comprehensive SEA for this purpose, but it is not complete, 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. Perhaps the minister could clarify this issue, and if he is not aware of the situation, he should perhaps educate himself.

The wind energy guidelines 2006 are still under review, and it is also a matter of Dail record that these 'guidelines' are woefully inadequate and unfit for purpose .

For a minister to argue that such plans and guidelines, illegal and unfit for purpose, should supersede elected councillor's decisions is bordering on criminal. 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 , as was included in received submissions. This alone would suggest 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 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.

Link to ruling

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-290/15>

The EJC ruling

‘Articles 2(a) and 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment 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.

The minister’s argument in his statement of reasons for removing EN7 from CDP is quite frankly laughable. The fact that the 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 makes no sense as an argument. Implementing said policy will have zero effect on the environment, what would he suggest councillors do to mitigate for nothing?

In his submission of 5th may, the minister stated 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 current 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 councillors err on the side of caution and use 1.5km setback as a minimum safe distance, given the way wind turbine technology is changing to be forever increasing the height and size of said turbines. This information is known to the minister, and for him, or his department to deny such knowledge smacks of something more than incompetence.

Please append this submission to any report that is sent to the minister as a response to his threats to undermine local democracy and decision making processes with his use of a section 31.

Regards

Ray Conroy, Coolroe, Ballybrittas, Co . Laois.

For an on behalf of Laois Wind Energy Awareness Group.

Mr Adam Ledwith,
Head of Communications and Public Affairs,
Irish Wind Energy Association,
Sycamore House,
Millennium Park,
Osberstown,
Naas,
Co Kildare

Date: 24th August, 2017

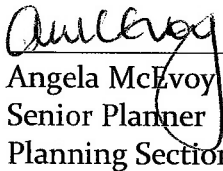
Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

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. 8.

McEvoy Angela

From: Kiely Donal
Sent: 15 August 2017 17:24
To: Adam Ledwith
Cc: McEvoy Angela
Subject: RE: Laois County Development Plan 2017-2023 – Draft Ministerial 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



From: Adam Ledwith [mailto:adam@iwea.com]
Sent: 15 August 2017 14:04
To: Forward Planning
Subject: Laois County Development Plan 2017-2023 – Draft Ministerial Direction

Please find attached the submission from IWEA regarding Consultation on the Draft Ministerial Direction in respect of the Laois County Development Plan 2017-2023.

Kind regards,
Adam

Adam Ledwith
Head of Communications and Public Affairs
Irish Wind Energy Association
Sycamore House
Millennium Park
Osberstown
Naas
Co. Kildare
W91 D627

Mob: +353 86 0453569
Email: adam@iwea.com
Web: www.iwea.com



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Watch IWEA celebrate 25 years of wind energy

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Sycamore House,
Millennium Park,
Osberstown, Naas,
Co. Kildare. W91 D627

Laois CDP 2017-2023 – Draft Ministerial Direction
Forward Planning Department
Laois County Council
Aras an Chontae
James Fintan Lalor Avenue
Portlaoise
Co. Laois

Tuesday, 15 August 2017

Submitted by email to: devplan@laoiscoco.ie

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

To whom it may concern,

The Irish Wind Energy Association welcomes the opportunity to make a submission in respect of the Draft Ministerial Direction (the Draft Direction; the Direction) on the Laois County Development Plan 2017-2023 (Laois CDP; the CDP).

IWEA is the leading renewable energy representative body in Ireland and as such has an active interest in the potential and capacity for renewable energy development, and in particular wind energy, in Ireland. IWEA works in a proactive and engaging manner with stakeholders in this area and as such feels it is both appropriate and important to make this submission.

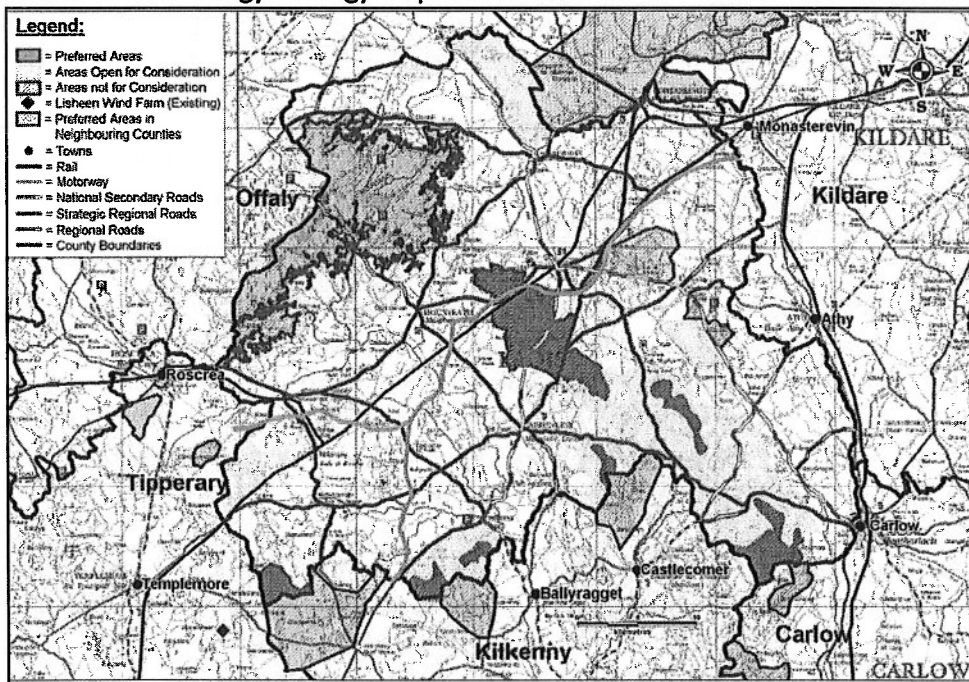
IWEA supports the Minister's intervention at this juncture in the Laois County Development Plan. As can be seen in previous submissions during the CDP process IWEA is extremely concerned about the decision of Laois County Council, and the stated motivation of some elected representatives, to effectively sterilise County Laois in respect of wind energy development. Aside from this being in contravention of national energy policy it is also unbecoming of a county such as Laois, and the people's locally elected representatives.

While IWEA commends the Minister's intervention as we believe it offers an opportunity to Laois County Council and its elected representatives to again examine the impact of what has been proposed in the CDP, we also feel the need to draw the Minister's attention to serious concerns industry has regarding the Map (the Revised Map) he has proposed as an alternative to the final adopted map. This map will substantially reduce the areas available for wind energy development in the county. In fact, if this map is adopted as a result of this process IWEA believes the Minister's intent in intervening in this matter, to demand respect

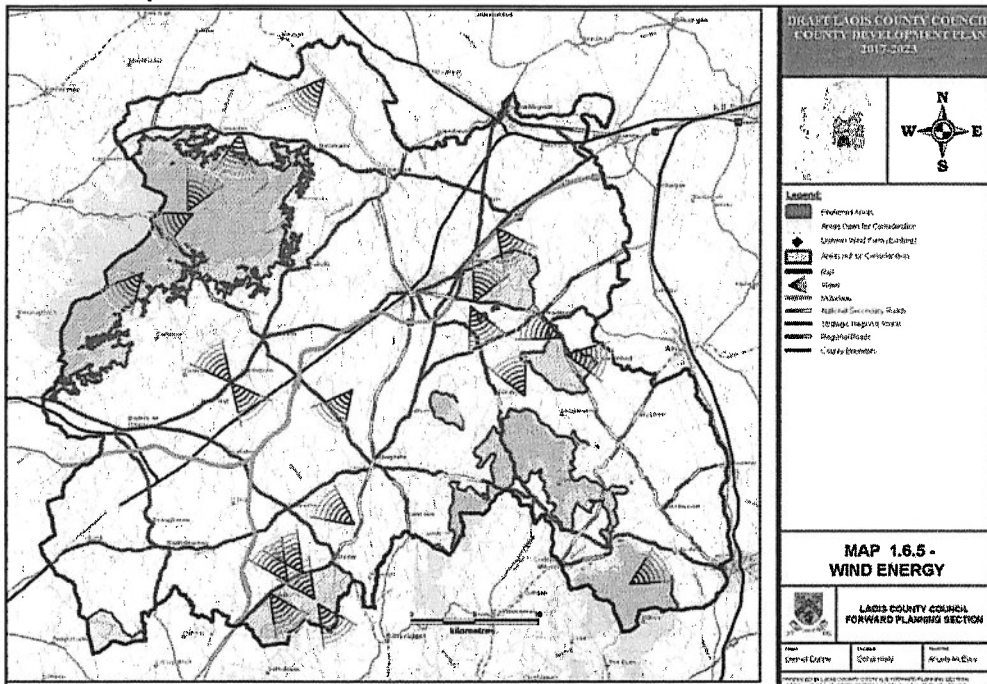
for and adherence to national guidelines ‘to secure the maximum potential from wind energy resources of the Planning Authority’s area’, will have the opposite impact. This map would render large parts of Laois with significant energy development potential as not suitable for consideration for wind farm development. Laois County Council has also not provided any scientific 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).

IWEA believes 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. As such the Revised Map is not fit for adoption in its current form. The extent of the lands being reclassified from the previous County Development Plan are illustrated below.

Previous Wind Energy Strategy Map 2011 – 2017 CDP



Revised Map issued with Ministers Direction



It appears to IWEA 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.

IWEA 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 Laois. IWEA supports the intention of the Minister, the Government and the Wind Energy Guidelines 2006 to secure *'the maximum potential from the wind energy resources of the planning authority's area'* and we do not believe the adoption the Revised Map is appropriate to achieve this.

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 consideration" and to decrease the area of land in either an "Open to Consideration" or "Preferred area" zoning by greater than 50%¹ than what was zoned previously as illustrated in Appendix 1. 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.

¹ in 2011 – 2017 13.6% of the county was zoned "open for consideration" and 5.6% of the county was zoned a "a preferred area". In 2017 – 2023 8.5% of the county was zoned "open for consideration" and 0.46% of the county was zoned "a preferred area".

IWEA supports and respects the national energy development guidelines in place for wind farms. We note in the Minister's Statement of Reasons appending his Draft Direction that decisions made by Laois County Council are *'not consistent with relevant guidelines to planning authorities'*, *'severely undermine and negate practical measures to adapt to climate change and reduce reliance on fossil fuels'*, and *'effectively designate the vast bulk of the County as not open for considering wind energy proposals'*. In his intervention, 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. IWEA believes 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.

IWEA has profiled here one single, sample wind farm in Laois. One 30-megawatt wind farm could yield for Laois County Council a total €5.4m. This includes money paid in commercial rates, development contributions, levy for turbine height as well as community benefit. The community benefit figure of €1,000 per MW should be considered carefully. While this is an agreed minimum by IWEA members many wind farm developers, working in conjunction with local authorities who support wind energy development, have reached agreements for community benefit in excess that €1,000. As such IWEA believes the €5.4m is in fact a minimum that Laois County Council would receive from such a project.

PROFILE: 30MW wind farm in County Laois (10 turbines, 3MW each)

Commercial Rates (€200,000 per year for 20 years)	€4,000,000
Turbine height levy (€50,000 per turbine over 100 metres)	€500,000
Development Contribution to Local Authority (€10,000 per MW)	€300,000
MINIMUM community benefit contribution (€1,000 per MW per year for 20 years)	€600,000
TOTAL (FOR ONE WIND FARM)	€5,400,000

At this juncture IWEA would request that the Minister 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 to.

IWEA wishes to impart upon the Minister and Laois County Council that it views the CDP as adopted as hostile to wind energy development, and unnecessarily so. Reputable and independent organisations such as the ESRI and the Sustainable Energy Authority of Ireland (SEAI) have documented how wind power is reducing our carbon dioxide emissions and improved our energy security without increasing the cost of electricity for the Irish consumer.


In fact, onshore wind in Ireland is one of the cheapest methods of electricity production available today.

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. Indeed, if the Revised Map is to be adopted IWEA considers that it will be in contravention to the proper planning and sustainable development principle set out by the Department of Housing Planning and Local Government as recently as two weeks ago in Circular PL 5/2017 to all Local Authorities. See text below:

Members of local authorities are reminded of their statutory obligations under the planning code in this regard and that in making or varying development plans, they must address renewable energy related policies or objectives when considering the proper planning and sustainable development of the area.

Thank you in advance for considering our submission and IWEA wishes to offer the Council, the Department and/or the Minister the opportunity to discuss these matters further with a view to reaching an agreement that is satisfactory for all concerned.

Yours sincerely,



Adam Ledwith
Head of Communications and Public Affairs

Mr Dave Fingleton,
Munny,
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 in relation to Laois County Development Plan 2017-2023
– Draft Ministerial Direction**

Munny,
Stradbally,
Co. Laois
15th August 2017



Dear Sir/Madam,

I wish to make the following submission to the Laois County Development Plan 2017-2023 – Draft Ministerial Direction

1.1 Public Participation in Decision-making as a Fundamental Right

The EU through its Lisbon Treaty enshrined the principle of public participation (Article 10(3) TEU) where: *“Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”*.

We voted for this Treaty in order to give it legal force, so it is simply outrageous that the present administration considers itself exempt from its provisions, in the manner in which it has with 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.

The United Nations Economic for Europe (UNECE) also identified 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 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters through Council Decision 2005/370¹, but introduced additional secondary legislation to give it effect.

During Communication ACCC/C/2006/17 (European Community) at the Aarhus Convention Compliance Committee the following clarification was prepared by the EU Commission and published on the UNECE website.²

- ***Impact on the European Community of approval of the Aarhus Convention***

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:124:0001:0003:EN:PDF>

² See 21.11.2017:

<https://www.unece.org/env/pp/compliance/Compliancecommittee/17TableEC.html>

- *On the basis of the case-law of the Court of Justice of the European Communities, the decisions of which are binding on the Community and its Member States, three main aspects should be stressed.*
- *An agreement concluded by the Council is binding on the Community's institutions and Member States³. It is the above Court's settled case-law that such an agreement forms **an integral part of the Community's legal order and the Court of Justice ensures compliance with it.**⁴*
- *This rule applies not only to international agreements concluded by the Community alone but also to joint agreements,⁵ in respect of the provisions which fall within the competence of the Community.⁶*
- ***Such agreements take precedence over legal acts adopted under the EC Treaty (secondary Community law).** So if there was a conflict between a Directive and a Convention, such as the Aarhus Convention, all Community or Member State administrative or judicial bodies would have to apply the provision of the Convention and derogate from the secondary law provision.⁷ This precedence also has the effect of requiring Community law texts to be interpreted in accordance with such agreements.*
- ***In ensuring compliance with commitments arising from an agreement concluded by the Community institutions, the Member States fulfil an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement.**⁸*
- *Therefore, under Article 226 EC, the Court of Justice may punish a Member State for non-compliance with an agreement concluded by the Community⁹. It*

³ Article 300(7) of the Treaty establishing the European Community.

⁴ Judgment of 30.4.1974, Case 181/73, Haegeman, paragraph 5; judgment of 26.10.1982, Case 104/81, Kupferberg; judgment of 30.9.1987, Case 12/86, Demirel, paragraph 7. This principle was most recently confirmed in the judgment of 11 September 2007, Case C-431/05, Merck Genéricos- Productos Farmacéuticos Lda/ Merck Co. Inc, Merck Sharp & Dohme Lda, paragraph 31.

⁵ Joint agreements are those concluded by the Community and all or some of its Member States with other countries and/or international organisations.

⁶ Judgment of 19.3.2002 in Case C-13/00, Commission v Ireland, paragraph 14; judgment of 30.5.2006 in Case C-459/03, Commission v Ireland, paragraph 84, and judgment of 11 September 2007 in Case C-431/05 above, paragraphs 31 to 33.

⁷ Judgment of 10.9.1996 in Case C-61/94, Commission v Germany, paragraph 52; judgment of 1.4.2004 in Case C-286/02, Bellio F.lli, paragraph 33; judgment of 10.1.2006 in Case C-344/04, IATA e.a., paragraph 35, and judgment of 12.1.2006 in Case C-311/04, Algemene Scheeps Agentuur Dordrecht, paragraph 25.

⁸ Settled case-law, Court's judgment of 30.9.1987 in Case 12/86, referred to above, paragraph 9; judgment of 19.3.2002 in Case C-13/00 referred to above, paragraph 15, judgment of 30.5.2006 in Case C-459/03 referred to above, paragraph 85, and judgment of 7.10.2004 in Case C-239/03, Commission v France, paragraph 26.

⁹ Judgments of 10.9.1996 in Case C-61/94 and of 7.10.2004 in Case C-239/03, both referred to above.

has also been declared competent to hand down a preliminary ruling under Article 234 EC on the interpretation and validity¹⁰ of Community legal acts incorporating the agreement into the Community system.

1.2 Public Participation Concerning Plans and Programmes Related to the Environment

The Laois County Development Plan is a plan related to the environment, to which Article 7 of the Aarhus Convention applies, where:

- *Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, Article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention.*

Where Article 6 paragraphs 3, 4 and 8 require that:

- *3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*
- *4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.*
- *8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.*

These are mandatory legal requirements under both the Aarhus Convention and Community legal order with respect to the adoption of a County Development Plan.

1.3 Maastricht Recommendations and Effective Public Participation 'when all options are open'

UNECE prepared for the 2014 Meeting of the Parties of the Aarhus Convention the 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention' (ECE/MP.PP/2014/2/Add.2)¹¹: The Maastricht Recommendations are based on existing good practice, and are intended as a practical tool to improve the implementation of the Convention's provisions on public participation in decision-making to be used in two key ways: (a) To assist Parties when designing their legal framework on public participation in environmental decision-making under the Convention; (b) To assist public officials on a day-to-day basis when designing and carrying out public participation procedures on environmental decision-making under the Convention.

The requirement that "*Each Party shall provide for early public participation, when all options are open and effective public participation can take place*", falls within the

¹⁰ Paragraphs 27 and 39 of the judgment of 10.1.2006 in Case C-344/04, referred to above.

¹¹ https://www.unece.org/env/pp/publications/maastricht_recommendations

scope of Article 6 of the Convention on 'public participation in decisions on specific activities', such as planning decisions involving the Environmental Impact Assessment Directive or decisions on pollution control permits. However, this Article 6(4) of the Convention is also engaged by Article 7 of the Convention in relation to public participation concerning plans and programmes related to the environment, such as a County Development Plan.

As a result the concept of 'multi-stage decision making' arises, which as the Maastricht Recommendations explain:

- *17. The framework for decision-making may involve various consecutive strategic decisions under Article 7 or 8 of the Convention (policies, plans, programmes, legislation or regulations) and individual decisions under Article 6 of the Convention (for example, decisions authorizing the basic parameters and location of a specific activity, its technical design, mitigation measures and, finally, its technological details related to specific environmental standards as applicable to the activity in the selected location). Such decision-making is often known as "multi-stage" decision-making.*
- *18. If so preferred, the framework for public participation in multi-stage decision-making may reflect the concept of tiered decision-making whereby at each stage of the decision-making certain options are discussed and selected with the participation of the public, and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. While the competent authority may have certain discretion as to the range of options to be addressed at each stage of the decision-making, at each stage where public participation is required, it should occur when all the options to be considered at that stage are still open and effective public participation can take place. If a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate on the options decided at that earlier tier.*
- *19. Irrespective of how the framework for decision-making is structured, the public should have a possibility to discuss the nature of and need for the proposed activity at all (the zero option, see para. 16 above). In order to satisfy the requirements of the Convention and to meet the legitimate expectations of the developer, this possibility should be provided at the earliest stage of the entire decision-making, when it is genuinely still open for the project not to proceed.*

The Maastricht Recommendations go on to further clarify with respect to Article 6(4):

- *78. In the case of tiered decision-making (see para. 17 above), in order to ensure early and effective public participation when all options are open:
 - a. *There should be at least one stage in the decision-making process when the public has the opportunity to participate effectively on whether the proposed activity should go ahead at all (the zero option) (see also para 16 above);*
 - b. *In addition, at each stage of a tiered decision-making process, the public should have the opportunity to participate in an early and effective manner on all options being considered at that stage;**

c. Information about the decision-making in the earlier tiers should be available in order for the public to understand the justification of those earlier decisions — including the rejection of the zero option and other alternatives;

d. When in a tiered decision-making process new information subsequently sheds doubt on decisions made in the earlier tiers or stages or severely undermines their justification it should be possible to reopen these decisions.

1.4 Compliance Proceedings with respect to National Renewable Energy Action Plan (NREAP)

The findings and recommendations of the Aarhus Convention Compliance Committee in Communication ACCC/C/2010/54, regarding the implementation of the renewable energy programme in Ireland and the EU as a Party to the Convention, were endorsed by the UNECE Aarhus Convention Meeting of the Parties in July 2014. This then led to a decision in International Law: Decision V/9g of the Meeting of the Parties on compliance by the European Union with its obligations under the Convention (ECE/MP.PP/2014/2/Add.1):¹²

(a) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement Article 7 of the Convention with respect to the adoption of National Renewable Energy Action Plans (NREAPs) by its member States on the basis of Directive 2009/28/EC, has failed to comply with Article 7 of the Convention;

(b) That the Party concerned, by not having properly monitored the implementation by Ireland of Article 7 of the Convention in the adoption of Ireland's NREAP, has also failed to comply with Article 7 of the Convention;

(c) That the Party concerned, by not having in place a proper regulatory framework and/or clear instructions to implement and proper measures to enforce Article 7 of the Convention with respect to the adoption of NREAPs by its member States on the basis of Directive 2009/28/EC, has failed to comply also with article 3, paragraph 1, of the Convention.

Note as the decisions adopted by the Meeting of the Parties, the Treaty Convention of the 47 countries, which have ratified the Convention and which is held every three years, are part of International Law and the interpretation of the Convention, they are also automatically part of Community legal order.

The Compliance Committee's recommendations, necessary to fulfil the requirements of Decision V/9g, required that *"the Party concerned would need to provide the Committee with evidence that"*:

(a) It had adopted a proper regulatory framework and/or clear instructions for implementing Article 7 of the Convention with respect to the adoption of NREAPs;

¹² [https://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post session docs/Decision excerpts in English/Decision V 9g on compliance by the European Union.pdf](https://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/Decision_excerpts_in_English/Decision_V_9g_on_compliance_by_the_European_Union.pdf)

(b) It ensures that the arrangements for public participation in its Member States are transparent and fair and that within those arrangements the necessary information is provided to the public;

(c) It ensures that the requirements of Article 6, paragraphs 3, 4 and 8, of the Convention are met, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation; (d) It had adapted the manner in which it evaluates NREAPs accordingly.

Regrettably the EU has refused to comply with the above recommendations and as a consequence, in relation to the forthcoming Meeting of the Parties to be held in September 2017, there is a draft Decision VI/8f concerning compliance by the European Union with its obligations under the Convention, ECE/MP.PP/2017/25¹³. This states that:

2. Endorses the finding of the Committee with respect to decision V/9g that the Party concerned has not yet fulfilled the requirements of paragraph 3 of that decision;

3. Reaffirms its decision V/9g and, in particular, reiterates paragraphs 2, 3 and 4 of that decision in their entirety;

4. Recommends that, with respect to the adoption of any amendments to the 2010 National Renewable Energy Action Plans ("NREAPs") or adoption of the corresponding post-2020 plans (whether in the form of National Renewable Energy Action Plans, integrated national energy and climate plans or otherwise), the Party concerned: (a) Adopt a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention; (b) Ensure that the arrangements for public participation in its member States are transparent and fair and that within those arrangements the necessary information is provided to the public; (c) Ensure that such a regulatory framework and/or clear instructions meets the requirements of article 6, paragraphs 3, 4 and 8, of the Convention, including reasonable time frames, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for early public participation when all options are open and ensuring that due account is taken of the outcome of the public participation; (d) Adapt the manner in which it evaluates National Renewable Energy Action Plans accordingly;

5. Requests the Party concerned, in the light of its slow progress to date, to take urgent measures to fully address the above recommendations;

The scandalous behaviour by both the EU and Ireland, in which the 2010 NREAP was adopted without any environmental assessment or public participation, was facilitated by the equally scandalous behaviour of the EU, who prevents citizens accessing the European Court to take enforcement action, an integral right of the access to justice provisions of the Aarhus Convention. This draft decision draft Decision VI/8f to be adopted at the September 2017 Meeting of the Parties also

¹³https://www.unece.org/fileadmin/DAM/env/pp/mop6/Documents_aec/ECE.MP.PP.2017.25_DD_EU_advance_copy.pdf

contains findings and recommendations to be endorsed concerning this failure to provide access to the European Court of Justice. Despite the scandalous and undemocratic objections of the European Commission to refuse to endorse these findings and recommendations¹⁴, the Council of Ministers has accepted these findings and their endorsement at the forthcoming Meeting of the Parties.¹⁵ Therefore, in order to comply with its own legal framework, reforms will have to be made to provide EU citizens direct access to the European Court of Justice to challenge such non-compliances with EU law on the environment.

1.5 Abject Failings of National Renewable Energy Action Plan

As pointed out previously with respect to the Maastricht Recommendations, if *“new information subsequently sheds doubt on decisions made in the earlier tiers or stages or severely undermines their justification it should be possible to reopen these decisions”*. While it only became public in late January 2017, as the Department only release it three months after the decision against them by the Commissioner for Environmental Information on the 26th October 2016, namely the decision of *“Damien McCallig and The Department of Housing, Planning, Community and Local Government (CEI/15/0027)”*¹⁶, the documents released are highly relevant.¹⁷

The original request was made over a year previously on the 30th July 2015 for access to certain information on wind energy modelling, related to both the NREAP and the update of the 2006 Wind Energy Guidelines. The Department’s position as articulated to Commissioner of Environmental Information was that released of this information, finalised by their consultants in May 2015, *“would contaminate the decision-making process, by creating further expansive debate and engagement prior to the new Ministers and both Departments having an opportunity to further consider and reflect on the available information”*. The Commissioner did not agree with the Department’s position; *“it seems to fly in the face of the public right to participate in an informed way in environmental decision- making (a right recognised by the Aarhus Convention)”*.

Appendix 1 shows the key graph from the technical analysis finally obtained. As countless submissions on planning applications and County Development Plans have pointed out, that before this wind energy programme was adopted, which in the 2010 NREAP called for between 4,094 MW to 4,737 MW of installed onshore wind energy capacity, it should have been worked out, where these turbines would be located, their impacts, the mitigation measures and the reasonable alternatives. In essence the completion of a Strategic Environmental Assessment; not least as Ireland has a scattered rural population, which already live in this countryside.

A 125 meter high wind turbine is a large visually obtrusive unit, nearly two thirds the height of the Ringsend Chimneys, with a rated output of about 2 MW. What the technical analysis was showing was that only some 2,000 MW of wind turbines of this size could actually be built in the available land space. Even then, the predicted noise impacts at nearly 45 dB(A), are known to cause major problems. In other words, it

¹⁴ <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-366-F1-EN-MAIN-PART-1.PDF>

¹⁵ https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/Council_Decision_EU_2017_1346.pdf

¹⁶ <https://www.ocei.gov.ie/en/decisions/decisions-list/cei-15-0027.pdf>

¹⁷ <https://cawtdonegal.wordpress.com/2017/01/16/irish-government-modelling-of-wind-energy-potential/>

would be a struggle to build-out less than half of what was now prescribed by the current NREAP for this renewable energy programme.

In a long running High Court Case *Shivnen & Ors V Enercon Windfarm Services Ireland Ltd and Ors* (Record Number 2011 9955 P) related to unacceptable noise impacts from a wind farm, it has been widely reported *“that before Mr Justice Gilligan on the 6th December 2016 the Court recorded that liability had been admitted by the defendants”*. One can also point out that if the existing Irish wind energy noise limits at 45 dB(A) were adequate, we wouldn't need this review of the 2006 wind energy guidelines, which has been 'on-going' since 2013.

Indeed, such problems are occurring worldwide, even Germany with its lower environmental noise limits has had to admit in a 2014 published report by its Federal Environmental Agency on the impact of ultrasound (*Machbarkeitsstudie zu Wirkungen von Infraschall*)¹⁸ that:

- *“Wind energy plants are a frequently studied source of noise in connection with infrasound. The publications show that the measurement of emission and propagation of noise from wind energy plants is plagued by uncertainties that complicate a substantiated noise forecast. With an increasing height of the wind energy plants, the rotor blades cut through an even more varied wind profile. It is therefore questionable whether the emission and propagation models of smaller wind energy plants can be applied to more modern and larger wind farms. This is very unlikely given the theoretical observations of aeroacoustic scientists”*. Further detailed research on this issue is on-going in Germany.

1.6 Draft Ministerial Direction and Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change¹⁹

The very essence of public participation is the ability to influence decisions and that it should be subsequently obvious from the decision-making process, as to how this influence was incorporated into the final decision. This is in effect what Articles 6(4), 6(8) and 6(9) of the Aarhus Convention entail. This Draft Ministerial Direction and associated Interim Guidelines turn the whole public participation procedure not only into a farce, but into one which is highly illegal, as it completely bypasses the public participation and turns it into sham pro forma exercise, i.e. the only decision making criterion is the requirements of the NREAP, which never went through public participation.

There is a Report of the Compliance Committee on general issues of compliance (ECE/MP.PP/2017/32)²⁰ to be endorsed at the September 2017 Meeting of the Parties. As this explains in relation to: *Early public participation, when all options are open – article 6, paragraph 4:*

¹⁸https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_40_2014_machbarkeitsstudie_zu_wirkungen_von_infraschall.pdf

¹⁹http://www.housing.gov.ie/sites/default/files/publications/files/interim_guidelines-statutory_plans_renewable_energy_climate_change.pdf

²⁰https://www.unece.org/fileadmin/DAM/env/pp/mop6/English/ece.mp.pp.2017.40_advance_unedited_version.pdf

- 39. *With respect to article 6, paragraph 4, the Committee cites with approval the Maastricht Recommendations, which state that:*

While the competent authority may have certain discretion as to the range of options to be addressed at each stage of the decision-making, at each stage where public participation is required, it should occur when all the options to be considered at that stage are still open and effective public participation can take place. If a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate on the options decided at that earlier tier

- 40. *The Committee considers that the discretion as to the range of options to be addressed at consecutive stages of the decision-making is closely related to the opportunities for public participation on those options. A multi-stage decision-making procedure in which certain options are considered at a stage without public participation and where no subsequent stage provides an “opportunity for the public to also participate on the options decided at that earlier tier” would be incompatible with the Convention.*

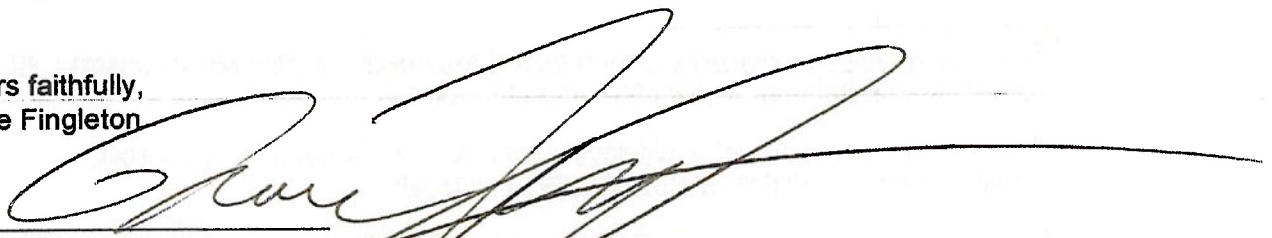
In simple terms, the scope of the public participation on the Laois County Development Plan and its renewable energy section has to consider the merits of why we need any renewable energy at all, and as to the many alternatives to a 40% renewable energy target in which the primary technology is wind generation, the latter as adopted illegally by the 2010 NREAP. Anything else is a breach of Community legal order.

The Compliance Committee also clarified in their findings and recommendations on ACCC/C/2012/76²¹, which are due to be endorsed at the September 2017 Meeting of the Parties, that:

- 66. *With respect to the role of public authorities, the Committee finds the view of the Party concerned that when issuing EIA/SEA decisions the competent authorities should not “question” a project/investment proposal that was designated by a superior authority as being of national importance (see para. 49 above) to be out of step with the Convention. If the role of authorities when issuing EIA/SEA decisions was to merely rubber-stamp the policy decisions taken at a higher level, it would effectively deprive the environmental decision-making of any significance and make public participation in such procedures meaningless.*

This Draft Ministerial Direction and associated Interim Guidelines have ignored the public participation to date on the Laois County Development Plan and instead adopted a position of diktat based solely on compliance with the provisions of the NREAP. This is illegal and will be subject in due course to subsequent legal challenge.

Yours faithfully,
Dave Fingleton

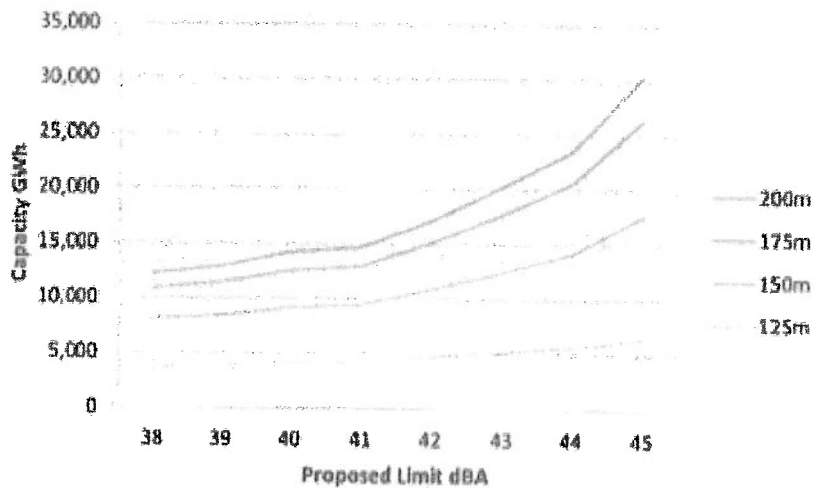


²¹ https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-76/Findings/ece.mp.pp.c.1.2016.3_E.pdf

Appendix 1

Graph from technical report prepared in May 2015, as released by Decision of the Commissioner for Environmental Information (CEI/15/0027).

The potential capacity for wind energy development in Ireland for the range of proposed noise limit levels and turbine tip height is shown in Figure 7.1



5,000 GWh equals 5,000,000 MWh

A year has $24 \times 365 = 8,760$ hours

Typically a wind turbine will produce 30% of its rated output, as the wind doesn't blow all the time at the speeds required to obtain that rated output, which are well in excess of Ireland's average wind speed.

- $(5,000,000 / 0.3) / 8,760 = 1,902$ MW of installed capacity

Note the 2010 NREAP required in respect of onshore wind:

- **Table 10 Modelled Scenario: 4,094 MW of installed capacity by 2020 equivalent to 10,228 GWh**
- **Table 10 Non-Modelled 'Export Scenario': 4,737 MW of installed capacity by 200 equivalent to 12,449 GWh**

Mr Henry Fingleton,
Cullenagh,
Portlaoise,
Co Laois

Date: 24th August, 2017

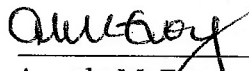
**Re: Laois County Development Plan 2017-2023- Draft Ministerial
Direction**

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. 69

LAOIS COUNTY COUNCIL
15 AUG 2017
PLANNING SECTION

5.

Cullenagh,
Portlaoise,
Co Laois
14th August 2017

Submission of Henry Fingleton to the Draft Ministerial Direction in the matter of Section 31 of the Planning and Development Act 2000 (as amended by S.21 of the Planning and Development (amended) Act 2010) Laois County Development Plan Direction 2010

Dear Sir/Madam,

I wish to make a submission on the Draft Ministerial Direction in the matter of Section 31 of the Planning and Development Act 2000 (as amended by S.21 of the Planning and Development (amended) Act 2010) Laois County Development Plan Direction 2010.

The Minister has stated Laois county councilors have ignored or have not taken sufficient account of the submissions made by the Minister in November 2016 and in May 2017 as part of the Laois CDP 2017. However, this is clearly incorrect as the CDP documents including the various County Manager Reports and the Minutes of Council Meetings show that the submissions made by the Minister were taken fully into account, ample evidence was available to support the decisions taken and therefore the Laois County Development Plan 2017-2023 is in compliance with the requirements of the Planning and Development Act 2000 (as amended).

The Minister claims that 'insufficient grounds' have been stated for the departure from the 2006 Wind Energy Guidelines. However, the Planning and Development Act (as amended) states at section 28(1B)(b) that reasons must be given for departing from policy guidelines. You will note that the written statements supporting the new County Development Plan provide these reasons.

The Minister states that 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 PolicyEN7, 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. However, the requirement to adapt to climate change and reduce reliance on fossil fuels was considered and taken seriously in the CDP process. Laois has already facilitated significant commercial wind-farm 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. ¹

An evidence-based assessment of the county involving the SEAI Wind Atlas to identify areas deemed eminently suitable for wind-farm development established that "It is considered that there are no such areas in County Laois.² This means that any potential locations for windfarms would be in sub-optimal locations at best which would be contrary to sustainable development. Laois is a small inland county which equates to only 2.4% of the national landmass;³ to suggest that changes to wind-farm setback distances in Laois will have a

¹ 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

² Appendix 5: Wind Energy Strategy, Laois County development Plan 2017-2023

³ Laois County Development Plan 2017-2023

significant impact on meeting's Ireland's emissions/renewable energy commitment's seems to be an unreasonable statement.

Implementing policy EN7 will not result in '*significant adverse effects on the environment*' as claimed by the Minister. It seems more likely that significant adverse effects will occur if it is not implemented as per your draft direction. Regarding this, please see the reference to a submission from the Irish Doctors Environmental Association (below) regarding the effect of wind turbine noise on human health and the recent High Court case number 2011 9955 P.

A holistic Local Authority Renewable Energy Strategy [LARES] is planned during the lifetime of the new County Development Plan 2017-2023, thereby using a different mechanism to reduce reliance on fossil fuels.⁴

In the context of the above, the issues to which you refer are not in conflict with either AIM 13 ("*the promotion of renewable energy where possible*") or EN1 (encouraging renewable energy developments "*subject to compliance with normal planning and environmental criteria*")

The existing Wind Energy Guidelines 2006 contain non-mandatory guidance. This guidance was discussed and considered as part of the County Development Plan process. The exclusion zones proposed are not arbitrary but were to achieve a balance with the other needs within the county to protect human health and amenity. As per the explanation given directly in response to the issues raised by your department "*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.*"⁵ In addition the SEAI Wind Atlas was used to identify areas deemed eminently suitable for wind-farm development which established that "there are no such areas in County Laois".⁶ By using this evidence-based approach any potential locations for wind-farms would be deemed to be in sub-optimal locations, contrary to proper planning and sustainable development.

This restriction on further suboptimal development of wind-farms in Laois should be taken in the context of the fact that Laois has already facilitated significant commercial windfarm projects,⁷ as well as plans to develop a holistic Local Authority Renewable Energy Strategy [LARES] during the lifetime of the new County Development Plan 2017-2023.⁸

The planning authority, contrary to the Minister's assertion, had more than sufficient evidence before it to support the requirement for a 1.5km setback in line with the precautionary principle. This is broadly equivalent to a 10xturbine height setback for the now common turbines in the height ranges 130-175m. The explanation given directly in response to the issues raised by your department "*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.*"⁹

⁴ Energy and Communications Objective OBJ1, Volume 1-Written Statement, Laois County Development Plan 2017-2023

⁵ Chief Executive's Report, Public Consultation of Proposed Material Alterations/Amendments, 26th May 2017

⁶ Appendix 5: Wind Energy Strategy, Laois County development Plan 2017-2023

⁷ 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

⁸ . Energy and Communications Objective OBJ1, Volume 1-Written Statement, Laois County Development Plan 2017-2023

⁹ Chief Executive's Report, Public Consultation of Proposed Material Alterations/Amendments, 26th May 2017

You will also see that a supplementary submission from the Irish Doctors Environmental Association raised serious issues regarding the adequacy and completeness of the existing Wind Energy Guidelines because "there is no express reference to human health or quality of life in Section 4.5 of the current [2006] Wind Energy Guidelines",¹⁰ and that this issue had to be addressed.

Relevant information which was in the public domain at the time included the High Court case 2011 9955 P where Enercon Wind Farm Services Ireland Ltd. admitted liability for nuisance, which caused seven Co. Cork families to move from their homes. As the homes involved were situated within 1km of the wind-farm this demonstrates that the current Wind Energy Guidelines were inadequate to prevent this situation.

There is clearly no deficiency in the evidential basis of the County Development Plan. As the minister has already pointed out, the Wind Energy Guidelines 2006 are non-mandatory and thus deviation from these is allowable. The CDP process takes full account of the requirements for renewable energy production and tackling the drivers of climate change, this is evidenced in the relevant CDP documents and I would reference you to the responses to your other points to see where these issues have been addressed.

Finally, I note that the 2006 Wind Energy Guidelines have never been subject to Strategic Environmental Assessment. This is in clear contradiction of your recent Planning Circular Letter Circular PL 5/2017 which states that

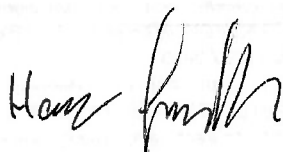
"In line with requirements under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, a Strategic Environmental Assessment (SEA) will be carried out on the proposed revisions to the Guidelines, incorporating the preferred draft approach outlined above, prior to their adoption. The SEA process ensures that environmental considerations and public participation are fully integrated in the preparation of plans and programmes which provide a framework for development consent or planning permission."

How is it that these new guidelines must be subject to SEA when the 2006 guidelines were not?

What sufficient and evidence based reasoning was employed by the minister with responsibility for planning matters in Directing a Local Authority to comply with any Wind Energy Guidelines **before** they have been subject to the required SEA process that the Minister has identified as being necessary? Article 4(1) of the SEA Directive states that "*The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.*" Therefore, how have the guidelines any standing either legally or as guidance to County Councils. In attempting to direct the Local Authority to adopt a plan (the wind energy guidelines in any form) is the Minister in breach of the SEA Directive? If that is the case then this would appear to nullify your draft direction.

Yours faithfully,

Henry Fingleton



¹⁰ Chief Executive's response to submission no 74, page 219, Stage 2 Consultations - Chief Executive's Report on Review of the CDP 2017-2023

Val Martin,
Drumsallagh,
Kingscourt,
Co Cavan

Date: 24th August, 2017

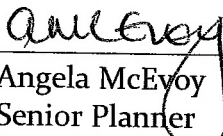
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Report to the Minister in this regard.

Mise le Meas,



Angela McEvoy
Senior Planner
Planning Section

Drumsallagh,
Kingscourt,
County Cavan.

To: Laois Co. Council,
Portlaoise.



Re: Public consultation on wind farm guidelines – submission by Val Martin.

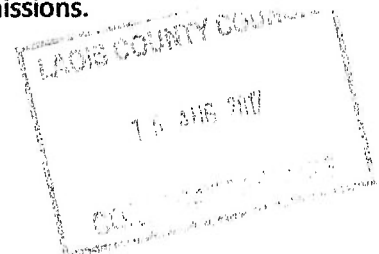
There are 3 requirements for the development of a wind farm with is an Annex 2 project.

- 1) The right of the public to participate when all options are open, to have their submissions taken into account and reasons for the decisions given in writing.

This is a constitutional right under the Charter of Fundamental Human Rights (Article 37 and 41) and Article 10(3) of the Lisbon Treaty. Provision is made for it in Directives 2001/42/EC Article 6 and Directive 2011/92/EC Articles 6, Directive 2003/4/EC and 2003/35/EC and others.

The Aarhus convention applies and it is guided by the Maastricht Recommendations. Ignorance of this is no defence in a Judicial Review. It is the law.

- 2) 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 a lot smaller than it is now. If a Judicial review is taken, the State may argue that the time limit for taking a legal challenge has passed. This argument was never tested, but 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. Therefore no National, Regional or Local authority can enact such a measure without complying in full with the Directive and this includes a full cost benefit analysis of wind energy, an environmental report and details of public submissions.



- 3) It follows that the 2006 Guidelines are unlawful and may be challenged at a later stage and it also follows that any enactment by Laois Co. Co. is ultra vires. It also follows that any new wind energy guidelines by the Irish State will be Ultra Vires and beyond their powers. Assuming that such new guidelines are along the lines of those published by the Department recently (which give no relief to distraught rural dwellers), Immediately they try it on, I will challenge and I will win.
- 4) I will not challenge any new guidelines introduced by any local authority which are genuinely designed to protect their publics from the horror of wind farm noise. The settlement in the case of the Banteer, Co. Cork families Record No 2011/9955p refers. If I do not challenge the new guidelines of Laois, Westmeath of other County Councils, then it is unlikely anyone else will. Therefore, Laois Co. Council can rest easy with their new guidelines. My campaign is selective in favour of the environment. However, it is probable the Irish State will mount a challenge to these local County Development Plans, or to failure to comply with their recent direction under Section 31 of the amended Planning and Development Act, 2000.
- 5) This challenge can be easily defended by employing a solicitor and barrister. They don't have to be very bright, just to plead the case C-290/15 is adequate. I will assist them with preparing their statement of grounds if asked free.
- 6) I have sent Laois Co. Council an Access to Information on the Environment Request and I sent one to the Department of the Environment and am awaiting a reply. This is needed if I am to take a Judicial Review, however I am quite busy running my farm with 28 cows and doing renovation work and I have to limit my Judicial reviews due to pressure of time.
- 7) I will send a copy of this to the Minister for his information.

Recommendations :

Reply to the Minister and ask him to explain to you where the power to interfere in your County Development Plan derives from. Draw attention to the SEA Directive, the EIA Directive, Directives 2003/4/EC and 2003/35/EC and the Aarhus Convention with Maastricht Recommendation. Name CJEU ruling 290/15 and ask him how he intends to defend a legal challenge by you or by any other person to any direction he may make. His ruling is binding.

Tell him that a very angry environmental campaigner called Val Martin is on his house. He is awaiting An Bord Pleanala to grant planning permission for Raragh wind farm No 09/270 connecting cables at Kingscourt and has already prepared his statement of grounds. He will be challenging the 2006 guidelines inter alia. Tell him also that Mr Martin has already joined forces with 80 other campaigners to canvass house to house in Churchtown, Co. Dublin in the constituency of former

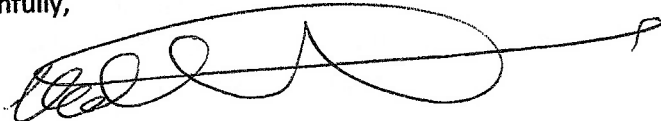
Energy Minister Alex White to dissuade voters from voting for him in the last election. . Mr White lost his seat. Tell the Minister that his seat may be next for targeting. I consent to you sending this submission to anyone you like.

No planning authority should validate any wind farm application until a proper SEA under Directive 2001/42/EC is carried out with public participation. If they mark them invalid, no Judicial Review can succeed. It's the law. Planners had brought this on themselves by acting unlawfully. The entire State and its local authorities are clinging to the wreckage of the National Renewable Energy Action Plan, even that wreckage is slowly sinking.

Wind energy does not work, it drives up electricity bills, drives the poor into fuel poverty, it kills thousands of rare birds each year and drives innocent people from their homes. I see former Minister Noel Dempsey has taken the 30 pieces of silver to lobby for the wind industry. I made a submission to the , Cloghan wind farm, Co. Offaly, Glenties wind Farm Co . Donegal, Emlagh Wind farm application, the Maigne one and the Castletownmoore wind farm, all in county Meath and all were refused.

Stick to you position, don't be bullied.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Val Martin', written over a horizontal line.

Signed:

Val Martin Farmer and environmental campaigner.

Date:

Mr Seamus Delaney,
Main Street,
Ballyroan,
Co Laois

Date: 9th August, 2017

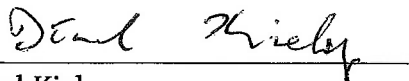
Re: Laois County Development Plan 2017-2023- Draft Ministerial Direction

A Chara,

I acknowledge your submission received on the 9th 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,



Donal Kiely
Acting Senior Planner
Planning Section



Submission No. 3

Dear Sir/Madam,

I wish to make a submission on the Laois County Development Plan 2017-2023 – Draft Ministerial Direction.

- The minister can issue such a direction if a draft county 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 Planning and Development Act 2000 (as amended) (PDA). The variation complies with proper and sustainable development of the area. It also complies with the PDA.
- Neither the 2006 wind energy guidelines nor our current Wind Energy Policy (NREAP) have been subjected to a Strategic Environmental Assessment and so do not comply with Planning and Development (Strategic Environmental Assessment) Regulations. Therefore, neither the policy nor the guidelines have any legal standing under the PDA.
- The Department have not undertaken an Environmental Impact Assessment (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.
- On 6th October 2016 the Minister for Communications, Climate Action and Environment (Deputy Denis Naughten) responded to a question on the revised wind energy guidelines with the following statement:

“When I was on the Deputy's side of the House, I raised this question as well. 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. There is a commitment in the programme for Government to present the new guidelines to the Government within six months, and we intend to do that. I hope we will have those finalised by next month.”

In other words, the Minister Naughten has clearly stated on the record that the current guidelines are “not fit for purpose” however the Minister Murphy still wants Laois County Council to change its County development plan to comply with these not fit for purpose and illegal guidelines.

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/daii2016100600012?opendocument>

- The Department of the Environment 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 absolute minimum distance necessary to meet the 40dB absolute noise limit proposed in the draft revision of the Wind Guidelines. I 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. This fact is reinforced by the case of a number of families in Banteer Co Cork who successfully sued a wind farm operator due to noise nuisance. The families were located within 1.5km of the wind turbines. Although, the settlement figures have not been released, we understand that this has run into several millions. 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 County Council would potential be liable for any future legal action of this kind. Amendments to the EIA directive, are applicable from 17th May 2017 introduced under Directive 2014/15/EU. These amendments compel the competent planning authority to prepare an EIAR and to consider impacts on population and human health, as well as taking into account ‘current knowledge’ and methods of assessments’. As the dBA method of measuring the sound/ infrasound/low frequency noise impacts of wind turbines has been shown not to be the correct method, Laois Co Co will have to employ methods using the dBL method.

<http://www.irisht Examiner.com/breakingnews/ireland/cork-village-families-settle-action-against-wind-turbine-operators-793550.html>

- A similar ministerial direction issued to Donegal Co Co was quashed in court following judicial review and the variation to the CDP upheld. Therefore Donegal have a setback distance in its County Development plan of 10 times turbine height. With many turbines now in the region of 150m – 175m tall, this is an effective set back distance of 1.5km – 1.75km. Similarly, Westmeath Co Co adopted a variation to their County development plan implementing a tiered setback distance. By attempting to block the variation in CDP, the minister is inconsistent by allowing differing set-backs in different counties, and putting the citizens of Laois at a disadvantage to those in other counties.
- The minister is incorrect in stating that wind developments in Laois will make a significant impact on the reduction of CO₂, thereby contributing to national mitigation policies. We save between 2.6 to 4% of our overall CO₂ emissions from the deployment of wind energy in Ireland. This from approximately 1,400 wind turbines and assuming SEAI figures are correct. However, analysts have shown that the reduction in CO₂ does not have a linear relationship with increased wind energy on the electricity grid. This is due to the fact that conventional generation of electricity must always be available to back up wind power, as electricity from wind cannot be stored and so must be used as generated or dumped. Also the capacity factor of wind (the % of it's theoretical maximum power output) is approximately 30%. The potential reduction in CO₂ from wind farms in Laois would make no meaningful difference to overall emissions and as full cost benefit analysis of deployment of wind on Ireland's electricity grid has never been undertaken, no claims can be made otherwise. Ireland (and the EU) have not completed a SEA, as stated, nor a regulatory impact analysis (RIA) as required before EU Directives before they are agreed. In summary, both the EU and Ireland broke all their legally binding procedures, subverted their citizens' rights, inflicted a financial, social and environmental burdens on Ireland which have not been justified.

Yours faithfully,

Seamus Delaney

From: Seamus Delaney
Main St.,
Ballyroan,
Co. Laois.