



# Pinewoods Wind Farm Substation & Grid Connection

## Annex 5.1: Policy and Legislation

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## Legislation

### EIA Directive

The EIA Directive (85/337/EEC) is in force since 1985 and applies to a wide range of defined public and private projects, which are defined in Annexes I and II of the EIA Directive<sup>1</sup>. The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009. The initial Directive of 1985 and its three amendments have been codified by Directive 2011/92/EU of 13 December 2011. Directive 2011/92/EU has subsequently been amended in 2014 by Directive 2014/52/EU.

The EIA Directive was first transposed into Irish law by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) which amended the Local Government (Planning and Development) Act, 1963 (and other legislation) to provide for environmental impact assessment. The European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. 296 of 2018) came into force on 1 September 2018, save for limited provisions which came into effect in January 2019. The Regulations principally seek to implement the requirements of EIA Directive 2014/52/EU.

### Habitats and Birds Directive

The Habitats Directive ensures the conservation of a wide range of rare, threatened or endemic animal and plant species. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora was adopted in 1992 and aims to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements. It forms the cornerstone of Europe's nature conservation policy with the Birds Directive and establishes the EU wide Natura 2000 ecological network of protected areas, safeguarded against potentially damaging developments.

The Natura 2000 network of protected areas is known as Special Areas of Conservation (SAC) and Special Protection Areas (SPA). In general terms, they are considered to be of exceptional importance in terms of rare, endangered or vulnerable habitats and species within the European Community. The requirements of the Habitats Directive have been transposed into Irish law through the European Communities (Birds and Natural Habitats) Regulations 2011 to 2015. This legislation affords protection to both Special Protection Areas and Special Areas of Conservation.

Special Areas of Conservation (SAC) are designated under the Conservation of Natural Habitats and of Wild Fauna and Flora Directive 92/43/EEC (Habitats Directive) which is transposed into Irish law by the EC (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011). Special Protection Areas (SPA) are classified under the Birds Directive (2009/147/EC on the Conservation of Wild Birds). Article 6(3) of the Habitats Directive requires an 'appropriate assessment' to be undertaken for any plan or project that is likely to have a significant effect on the conservation objectives of a Natura 2000 site. An 'appropriate assessment' is an evaluation of the potential impacts of a plan or project on the integrity of a Natura 2000 site, and the incorporation, where necessary, of measures to mitigate or avoid negative effects.

### EU Water Framework Directive (WFD)

The EU Water Framework Directive (2000/60/EC) (as consolidated), establishes an

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<sup>1</sup> <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

integrated approach to the protection, improvement and sustainable use of rivers, lakes, groundwater and transitional coastal waters throughout the European Union. It was given legal effect in Ireland by the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003). The purpose of the WFD is to maintain the “high status” of waters where it exists, prevent deterioration in existing status of waters and to achieve at least “good status” in relation to all waters by 2015 or, at the latest, by 2027.

### National Legislation

Flora and fauna in Ireland are protected at a national level by the Wildlife Acts 1976 to 2018 and the Flora (Protection) Order 2015. Natural Heritage Areas (NHA) are areas that are considered to be important for the habitats present or for the species of plants and animals supported by those habitats. Under the Wildlife Amendment Act 2000, NHAs are legally protected from damage from the date they were formally proposed for designation. Section 19(1) of the Act states that ‘*Where there is a subsisting natural heritage area order in respect of any land, no person shall carry out, or cause or permit to be carried out, on that land any works specified in the order or any works which are liable to destroy or to significantly alter, damage or interfere with the features by reason of which the designation order was made*’.

In addition, a list of proposed Natural Heritage Areas (pNHAs) was published in 1995 but to date these have not had their status confirmed. Prior to statutory designation, pNHAs are subject to limited protection under various agri-environment and forestry schemes and under local authority planning strategies such as County Development Plans.

The European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (S.I. 296 of 2009) was developed to support the achievement of favourable conservation status for freshwater pearl mussel. That legislation sets environmental quality objectives freshwater pearl mussel habitat, requires the production of sub-basin plans with programmes of measures to achieve these objectives and sets out the responsibilities of the public authorities in respect of implementing the sub-basin plans and associated measures.

### Local Planning Policy

The relevant planning policies and objectives, extracted from Volume 1 of Laois County Development Plan 2017 – 2023, are set out below.

### Natural Heritage

It is an objective of the Council to:-

- **OBJ 1** To maintain, protect and where possible enhance the conservation value of existing European and national designated sites (SAC, SPA, NHA) in the county and any additional sites that may be proposed for designation during the period of this Plan;
- **OBJ 2** Promote and protect the Slieve Blooms as a significant natural heritage asset in terms of landscape, ecology and geology;
- **OBJ 3** Encourage the conservation, understanding of, access to and promotion of County Laois’ natural heritage;
- **OBJ 4** Use the Landscape Character Assessment (LCA) to protect parts of the Laois lands cape that are of scenic importance and sensitive to change;
- **OBJ 5** Ensure the protection of terrestrial, aquatic and soil biodiversity throughout the county and protect against invasive species;

- **OBJ 6** Where the opportunity arises, the Council will seek to create a green network of spaces and corridors in order to provide for rich ecological networks and also amenity areas by linking up existing fragmented green spaces and focusing on linear features such as hedgerows, canal and river banks, railway embankments and walking paths and promote a feasibility study on opportunities for incorporation of green infrastructure;
- **OBJ 7** Implement the key objectives and associated actions identified in the county Heritage Plan and any revision thereof.

### Biodiversity

It is policy of the Council to:-

- **BIO1** Comply with the objectives of the National Biodiversity Plan 2011-2016 (and any future National Biodiversity Plan which may be adopted during the period of this plan) as appropriate to County Laois;
- **BIO2** Contribute, as appropriate, towards the protection of designated ecological sites including candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs); Ramsar Sites; Wildlife Sites (including Natural Heritage Areas, proposed Natural Heritage Areas and Nature Reserves); Salmonid Waters; Flora Protection Order sites; and Freshwater Pearl Mussel catchments (the River Nore Freshwater Pearl Mussel sub-basin management Plan should be referenced in this regard);
- **BIO3** Contribute towards compliance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.

### Green infrastructure

It is the policy of the Council to:-

- **NH1** Ensure that the conservation of biodiversity in protected areas and in the wider countryside is integrated into all aspects of the operation of the Council;
- **NH2** Ensure that the following guidance is taken into account when assessing planning applications for extractive industry "Notice Nature Biodiversity Guidance for Extractive Developments";
- **NH3** Ensure that landscaping plans incorporate features or measures to foster biodiversity and enrich ecological networks;
- **NH4** Preserve the County's extensive network of hedgerows and eskers which are of landscape and ecological importance;
- **NH5** Preserve intact bogs and fens from drainage works for their biodiversity value as well as their functioning as watersinks and for carbon sequestration;
- **NH6** Implement the Habitats' Directive requirement to preserve other types of ecological linkages or steppingstones, such as railway embankments, road verges and ditches, riparian lands etc;
- **NH7** Work with other agencies to address the issue of invasive species within water courses in the County;
- **NH8** All projects and plans arising from this plan (including any associated improvement works or associated infrastructure) will be screened for the need to undertake Appropriate Assessment under Article 6 of the Habitats Directive. A plan or project will only be authorised after the competent authority has ascertained, based on scientific evidence, Screening for Appropriate Assessment, and a Stage 2 Appropriate Assessment where necessary, that:
  1. The Plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site (either individually or in combination with other plans or projects); or

2. The Plan or project will have significant adverse effects on the integrity of any European site (that does not host a priority natural habitat type/and or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000; or
  3. The Plan or project will have a significant adverse effect on the integrity of any European site ( that hosts a natural habitat type and/or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons for overriding public interest, restricted to reasons of human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000.
- **NH9** Conserve, enhance, manage and protect, facilitate, improve the green infrastructure network, in consultation with relevant stakeholders and develop new Green infrastructure by recognizing the synergies that can be achieved with regard to the protection and management of heritage.

### Designated Sites

It is the policy of the Council to:-

- **NH9** No projects giving rise to significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this plan (either individually or in combination with other plans or projects);
- **NH10** Assess, in accordance with the relevant legislation, all proposed developments which are likely to have a significant effect (directly or through indirect or cumulative impact) on designated natural heritage sites, sites proposed for designation and protected species;
- **NH11** Protect Natural Heritage Areas (NHA) from developments that would adversely affect their special interests;
- **NH12** Recognise and protect the significant geological value of sites in County Laois and safeguard these sites, in consultation with the Geological Survey of Ireland and in accordance with the National Heritage Plan and "Geological Heritage Guidelines for the Extractive Industry";
- **NH13** Support and co-operate with statutory authorities and others in support of measures taken to manage designated nature conservation sites in order to achieve their conservation objectives;
- **NH14** Promote development for recreational and educational purposes that would not conflict with maintaining favourable conservation status and the meeting of the conservation objectives for designated sites;
- **NH15** Engage with the National Parks and Wildlife Service to ensure Integrated Management Plans are prepared for all Natura sites (or parts thereof) and ensure that plans are fully integrated with the County Development Plan and other plans and programmes, with the intention that such plans are practical,

achievable and sustainable and have regard to all relevant ecological, cultural, social and economic considerations and with special regard to local communities.

### Non-Designated Sites

It is the policy of the Council to:-

- **NH16** Maintain and enhance the quality of the natural environment in its entirety as wildlife heritage is not just confined to designated areas;
- **NH17** Minimise the impact of new development on habitats of natural value that are key features of the County's ecological network. Developments likely to have an adverse effect on recognised sites of local nature conservation importance will be required to demonstrate the impacts on the ecological value of the site and will not be approved unless it can be clearly demonstrated that there are reasons for the development that outweigh the need to safeguard the nature conservation value of the site;
- **NH18** Ensure that proposals for development protect and enhance biodiversity, wherever possible, by minimising adverse impacts on existing habitats and by including mitigation and/or compensation measures, as appropriate, which ensure that biodiversity is enhanced;
- **NH19** Apply the precautionary principle in relation to development proposals with potential to impact on County Biodiversity Sites or of local nature conservation interest by requiring an ecological impact assessment to ensure that any proposed development will not affect the integrity and conservation value of the site;
- **NH20** Ensure that no ecological networks, or parts thereof which provide significant connectivity between areas of local biodiversity, are lost without remediation as a result of implementation of the Plan.

### Trees and Woodland

It is the policy of the Council to:-

- **NH21** Undertake a study within the lifetime of the Plan to document and map trees that require preservation and designate accordingly;
- **NH22** Protect individual trees, groups of trees and woodland in the interests of landscape conservation (including townscapes) and nature conservation as part of the development management process;
- **NH23** Promote the preservation, enhancement and creation of native and semi natural woodlands;
- **NH24** Encourage and use native species of trees within landscaping in private and public developments;
- **NH25** Prepare Tree Preservation Orders for individual trees, groups of trees or woodland areas where expedient and in the interests of visual amenity, biodiversity and the environment;
- **NH26** Encourage development proposals that enhance the landscape through positive management and additional planting and or sensitive replanting of native tree species.

### Hedgerows

It is the policy of the Council to:-

- **NH27** Protect existing hedgerows from unnecessary removal in order to preserve the rural character of the countryside and promote biodiversity;

- **NH28** Insist on the use of native species when planting new hedgerows;
- **NH29** Ensure cutting of hedges within the control of the Council only takes place at permitted times unless absolutely necessary in the interests of safety.
- **NH30** Recognise the historical and archaeological importance of townland boundaries, including hedgerows, and promote their protection and retention.

### Riparian Buffer Zones

It is the policy of the Council to:-

- **NH31** Protect riparian corridors by reserving land along their banks for ecological corridors and maintain them free from inappropriate development;
- **NH32** Require that development along rivers set aside lands for pedestrian routes and cycleways that could link to the broader area and established settlements in the area;
- **NH33** Ensure that no development including clearance and storage of materials takes place within a minimum distance of 10-15m from each bank of any river, stream or watercourse;
- **NH34** Ensure that all proposed greenfield residential and commercial developments use sustainable drainage systems (SuDS) in accordance with best current practice;
- **NH35** Work with State Agencies, landowners, local communities and other relevant groups to protect and manage inland waters, river corridors and their floodplains from degradation and damage, and to recognise and promote them as natural assets of the urban and rural environment.
- **NH36** implement the relevant parts of the Planning and Development (Amendment) (No. 2) Regulations 2011 and the European Communities (Amendment to Planning and Development) Regulations 2011 which require planning permission to be applied for where the area impacted by works relating to the drainage or reclamation of a wetland exceeds 0.1 hectares or where such works may have a significant effect on the environment. Such planning applications would need to be supported by an Appropriate Assessment where necessary.

### Nore Freshwater Pearl Mussel

It is the policy of the Council to:-

- **NH37** Protect the Nore Pearl Mussel through the measures set out in the Freshwater Pearl Mussel Nore Sub- Basin Management Plan (2009).

### Invasive Species

It is the policy of the Council to:-

- **NH38** Prevent the spread of invasive species within the Plan area, including requiring landowners and developers to adhere to best practice guidance in relation to the control of invasive species;
- **NH39** Seek the control and/or eradication of invasive species as appropriate within the Plan area as opportunities and resources allow. Targeted invasive species control should be informed by current distribution of species, degree of threat posed and resources available to control and/or eradicate them.

