

Chief Executive's Report

Submissions to:

Proposed Variation 1 to the Kilkenny City and County
Development Plan 2021 - 2027

November 2023





Kilkenny County Council
November 2023

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1. Introduction

This report forms part of the statutory procedure for the making of Variation 1 to the Kilkenny City and County Development Plan (KCCDP).

This report addresses the submissions received during the 4 week public consultation period, from the 4th October to the 1st of November 2023 in relation to the Proposed Variation.

The purpose of this report is to:

- summarise the written submissions/observations received in relation to the proposed variation during the public consultation period.
- set out the Chief Executive's response to the issues raised in the submissions/observations and.
- make recommendations to the Elected Members on the issues arising from the consultation process.

This report is being furnished to the Elected Members of Kilkenny County Council in accordance with Section 13(4) of the Planning and Development Act 2000, as amended, for their consideration.

1.1 Proposed Variation

This proposed Variation is intended to change the zoning on two sites, as part of the implementation of the Residential Zoned Land Tax in Kilkenny City as follows:

- a) An area of approx. 0.6 hectares at Aut Even Farm, Freshford Road, Kilkenny City from 'Existing Residential' to 'Agriculture' to reflect the existing use and align the zoning with the remainder of the agricultural enterprise. See Figure 1a.
- b) An area of approx. 0.2 hectares at Bleach Road, Kilkenny City from 'Existing Residential' to 'Amenity/Green Links/Biodiversity conservation/open space and recreation' to align with the Strategic Flood Risk Assessment recommendations for the site. See Figure 1b.

Site 1a Aut Even Farm – currently zoned Existing Residential – proposed change to Agriculture



Site 1b Bleach Road, Kilkenny, currently zoned Existing Residential - change to Amenity/Green Links/Biodiversity conservation/open space and recreation



Source: Figure CS4 Kilkenny City and County Development Plan 2021

1.2 Details of Public Display

The documents put on public display for the Proposed Variation were:

- Public Notice
- Proposed Variation
- Appropriate Assessment Screening Report
- Strategic Environmental Assessment Screening Report

These documents were placed on the Consult.kilkenny.ie consultation website and linked from the Council's own website. Hard copies of the documents were on public display at the Planning Office, Kilkenny County Council, County Hall, John Street, Kilkenny.

Submissions could be made by:

- Email to ourplan@kilkennycoco.ie
- Online at consult.kilkenny.ie
- Written submissions to: Senior Planner, Planning, Kilkenny County Council, County Hall, John Street, Kilkenny.

2. Submissions Received

In total, eight submissions were received to the proposed variation. Below is a list of the submissions received¹.

Reference	Name
KK-C237-1	Gordon Harisson
KK-C 237-2	EPA
KK-C 237-3	Transport Infrastructure Ireland
KK-C 237-4	Alex Wilsdon
KK-C 237-5	OPR
KK-C 237-6	Southern Regional Assembly
KK-C 237-7	Uisce Eireann
KK-C 237-8	Shane Phelan

2.1 Summary of Issues Raised, Chief Executive's Response and Recommendations

Ref	Name	Summary
KK-C237-5	Office of the Planning Regulator	The Office concludes that no recommendations or observations are warranted since the proposed Variation will not undermine the Development Plan in delivering on its core strategy in a compact and a sequential manner.
Response: Noted.		
Recommendation: No change to the proposed Variation.		

¹ The full text of the submissions received is available to view at the following link: <https://consult.kilkenny.ie/en/node/6288/submissions>

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Ref	Name	Summary
KK-C237-6	Southern Regional Assembly	The Assembly states that the proposed Variation does not materially impact on the achievement of any strategic or regional policy objectives contained in the RSES and would be consistent with the Regional Spatial and Economic Strategy (RSES) for the Southern Region.
Response: Noted.		
Recommendation: No change to the proposed Variation.		

Ref	Name	Summary
KK-C237-1	Gordon Harisson	<ol style="list-style-type: none"> 1. The submission refers to the site on the Bleach Road, Site 1B, subject to a change from residential to amenity. The submission notes this site is on the Vacant Sites Register, ref. VSR19-12, and states it is unclear how the proposed rezoning will impact on the ability of Kilkenny County Council to collect the outstanding levy, and the variation makes no assessment of this issue. 2. The omission of any reference to the planning permission on that site in the Appropriate Assessment Screening Report, is a defect. 3. This Variation has no purpose beyond sheltering a portion of the site from the Residential Zoned Land Tax by rezoning to Amenity while the site-specific objective, Z17, attempts to maintain all the benefits of the residential zoning to permit the land to be developed. 4. The submission questions the purpose of this variation.
Response:		
<ol style="list-style-type: none"> 1. The RZLT process, although intended to replace the Vacant Site legislation, is separate from the Vacant Sites Register process. The collection of any outstanding levies remains an obligation of the Council. If the zoning change is approved, it is intended that the question as to how this would impact on the outstanding vacant site levies would be referred for legal advice. 2. Although the submission makes reference to the planning history on this site, there is currently no extant planning permission on this site. 3. This Variation is to bring the zoning on this site into alignment with the Strategic Flood Risk Assessment recommendations for the site. The use of the land for open space associated with any residential development is compatible with the Guidelines on The Planning System and Flood Risk Management, so the inclusion of the site specific objective, Z17, for the provision of open space in the amenity zoning, is to clarify that for any future application on this site. 4. The purpose of the Variation is set out in Point 3 above. 		
Recommendation: No change to the proposed Variation.		

Ref	Name	Summary
KK-C237-2	EPA (Lee Kelly, SEA Unit)	<p>1. This submission suggests that EPA Guidance and resources, and various policies relating to climate change and sustainability, are taken into account.</p> <p>2. The submission notes that where changes are made prior to finalisation, they should be screened for potential for likely significant effects in accordance with the SEA Regulations.</p> <p>3. The submission notes that the plan or programme should comply with the requirements of the Habitats Directive where relevant.</p>
<p>Response</p> <p>The contents of the submission are noted.</p>		
<p>Recommendation:</p> <p>No change to the proposed Variation.</p>		

Ref	Name	Summary
KK-C237-3	Transport Infrastructure Ireland	<p>1. TII has no specific observations to make in relation to potential impacts on the existing national road network in the area.</p>
<p>Response: Noted.</p>		
<p>Recommendation: No change to the proposed Variation.</p>		

Ref	Name	Summary
KK-C237-4	Alex Wilsdon Jnr	<p>1. The submission requests that an additional parcel be rezoned as part of this Variation. The land is in the submitter's ownership, and is located to the rear of Lacken Lodge, Dublin Road, Kilkenny. This request is on the basis that the land is subject to impediments to development due to the status of the title to the land. According to legal advice received by the owner, the land could not be developed during the life of the current Development Plan. A rezoning is therefore sought, from Residential to agriculture or strategic reserve.</p>
<p>Response:</p> <p>1. This land was the subject of a submission to the Draft Map of lands in scope for the Residential Zoned Land Tax, in January 2023, https://consult.kilkenny.ie/en/submission/kk-c205-27. A determination on this submission was made and notified to the landowner in accordance with the legislation. This determination set out that the land zoned as General Business should be excluded from the map of land in scope, as land within the mixed use zoning is required for, or integral to that farming trade, then the land is not considered '<i>vacant and idle land</i>' and is not in scope. In relation to the land zoned as Residential, the determination noted the land was still in scope, and that the issue of any financial or legal impediments is a matter for the Revenue Commissioners at a later stage. That submission had sought the removal of the residential zoning from this land. In response, the determination stated: "having regard to: the Development Plan Guidelines for Planning Authorities, the Planning and Development Act, the Kilkenny City and County Development Plan, the location of this site and the need for housing, it is not considered reasonable to consider this site for a proposed variation". This determination was appealed to An Bord Pleanála, ref. ABP-316394-23, and the Bord confirmed the determination in July 2023.</p>		
<p>Recommendation: No change to the proposed Variation.</p>		

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Ref	Name	Summary
KK-C237-7	Uisce Éireann	1. Uisce Éireann have no objection or comments to make in respect to same.
Response: Noted.		
Recommendation: No change to the proposed Variation.		

Ref	Name	Summary
KK-C237-8	Shane Phelan	<ol style="list-style-type: none"> 1. The submission refers to the previous zoning of land in the Development Plan, previous Variations, and the process around the inclusion of land on the Vacant Sites Register. A number of specific questions are raised in relation to those processes. 2. The change in zoning from Residential to Agriculture on the Freshford Road is welcome, but does not go far enough. All applications for rezoning from Residential to Agriculture should be considered. 3. The process by which this land (Site 1A) was zoned Residential is questioned, and all the land at this location should be examined. 4. The submission contends the appeal process for the Vacant Sites Register was flawed, and suggests that the appeal process for the RZLT may also be flawed. 5. The rationale for land zoned as Strategic Reserve adjacent to the proposed new school should be examined. 6. In relation to the site on the Bleach Road, Site 1B, subject to a change from residential to amenity, the submission notes this site is on the Vacant Sites Register, and questions why this land was not zoned amenity in the 2021 Development Plan, and why site-specific objective, Z17, is included. 7. The submission questions why there is no reference to the planning permission on this site. 8. The submission asks was the inclusion of this site on the map of lands in scope appealed to the Bord. 9. The submission contends Variation 1B is premature, pending an appeal process, and its scope and consequences are unclear and contradictory. 10. The submission questions if the rezoning from Residential triggers the activation of Strategic Reserve land.
Response:		
1. The RZLT process, although intended to replace the Vacant Site legislation, is separate from the Vacant Sites Register process. The making of the 2021		

Development Plan, and previous Variations, and the Vacant Sites process, are all subject to their own legislative processes.

2. A total of 25 submissions were received (plus 4 duplications) to the Draft maps of land in scope for the RZLT, which were considered and subject to determinations on whether the land should remain in scope or not, in March 2023. Four of these included rezoning requests, one of which, Site 1A, is the subject of this Variation. All landowners had a right of appeal to An Bord Pleanála, and the 12 determinations appealed to the Bord, were all confirmed by the Bord. All landowners will have another opportunity to make submissions to the annual review of RZLT maps in February of 2024.

3. Site 1A at Aut Even Farm has been zoned Residential since the 2002 Development Plan. At no point during the 3 subsequent Development Plans did the owners seek a rezoning from Residential to Agricultural.

4. This is a matter for An Bord Pleanála and is refuted by this Planning Authority.

5. This Variation does not impact on the Strategic Reserve zoning. The making of the 2021 Development Plan is a separate legislative process and all the documentation around the process is freely available. The Planning Authority is constrained by its core strategy in how much land can be zoned for Residential, and the Strategic Reserve designation is to protect critical land from inappropriate development.

6. This Variation is to bring the zoning on this site into alignment with the Strategic Flood Risk Assessment recommendations for the site, from the 2021 Plan. The use of the land for open space associated with any residential development is compatible with the Guidelines on The Planning System and Flood Risk Management, so the inclusion of the site specific objective, Z17, for the provision of open space in the amenity zoning, is to clarify that for any future application on this site.

7. There is currently no extant planning permission on this site.

8. The landowner of Site 1B made a submission to the Draft map of lands in scope for the RZLT, submission reference kk-c205-26². In response to this, the determination noted that a change in zoning was required to bring the zoning on this site into alignment with the adopted Strategic Flood Risk Assessment, and that a change in zoning would be proposed. The landowner did not appeal this determination.

9. This Variation is not premature, but is required for the implementation of the Residential Zoned Land Tax. Its scope is clear, and if approved, it is intended that the consequences for the vacant site process, be referred for legal advice.

² <https://consult.kilkenny.ie/en/submission/kk-c205-26>

10. This Variation involves a total reduction in Residential zoning of 0.08 hectares. Given the context that the total amount of land zoned in the Development Plan for Residential was 42.8 hectares, this reduction is not considered to cause the review of other land designations.

Recommendation: No change to the proposed Variation.

3. Summary of Recommendations of the Chief Executive

Proposed Variation 1 is a measure to change the zoning on two sites in Kilkenny City, as part of the implementation of the Residential Zoned Land Tax.

I recommend adoption of the Variation.



Laurence P. Power,

Chief Executive