



12th August 2022

For the Attention of: Ms Moira Murrell, Chief Executive

Kerry County Council,
County Buildings,
Rathass,
Tralee,
County Kerry
V92 H7VT

Section 31 of the Planning and Development Act 2000, as amended
Notice of Intention to Issue a Direction to Kerry County Council on the Kerry County
Development Plan 2022 - 2028

Dear Moira,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 29th July 2022 in connection with the Kerry County Development Plan 2022 – 2028, as adopted by the elected members of Kerry County Council on 4th July 2022, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Kerry County Council to take certain measures specified in this notice.

On consideration of the recommendation made to me by the Office of the Planning Regulator (the Office), I have formed the opinion that:

- (i) The Development Plan has not been made in a manner consistent with and has failed to implement the recommendations of the Office of the Planning Regulator under Section 31 AM.



- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area.
- (iii) The Development Plan is not consistent with National Policy Objectives set out in the National Planning Framework, specifically 55 (NPO 55) and the Wind Energy Development Guidelines (2006) (the Wind Energy Guidelines).
- (iv) The Plan fails to have regard to Ministerial Guidelines issued under Section 28 of the Act. The statement under section 28(1A)(b) attached to Development Plan as made fails to include information which demonstrates that the planning authority has formed the opinion that it is not possible to implement the policies and objectives contained in the *Development Plan Guidelines for Planning Authorities, 2022*, and the *Wind Energy Development Guidelines (2006)* and the *Spatial Planning and National Roads Guidelines (2012)*, because of the nature and characteristics of the area, in addition to the reasons for the forming of that opinion contrary to section 28(1B)(b).

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons section of the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

PROCESS TO DATE

Draft Plan

The Draft Kerry Development Plan 2022 – 2028 (the draft Plan) was on public display from 6th December 2021 to 23rd February 2022. Chapter 12 - Energy in Volume 1 of the draft Plan set out the proposed objectives and policies of the planning authority in respect of renewable energy, including wind energy policy under section 12.5.4.1 Wind Energy. Among others, this included the identification of Wind Energy Policy Areas under section 12.5.4.1.3 comprising areas of the county designated as ‘Open-to-Consideration’ and ‘Repowering Areas’ in Map 12.4 (and



associated Map 5 in Volume 4), with associated objectives KCDP 12-13 to KCDP 12-20. An additional wind energy objective was included under section 12.5.5 Community Consultation, Community Benefit and Microgeneration / Community Projects.

A statement was appended (Appendix 2) to the draft Development Plan, as required under section 28(1A)(b) of the Act, concerning the implementation of Ministerial Guidelines. The statement did not include any information to demonstrate that the planning authority had formed the opinion that it is not possible to implement certain policies and objectives of the Minister contained in any relevant guidelines and did not provide any reasons for not implementing any such policies or objectives. Such information and reasons are required where section 28(1B)(b) of the Act applies.

The Office made a submission to the draft Plan containing eight (8) recommendations and eight (8) observations on 23rd February 2022.

The Office did not receive a notice under section 12(5)(aa) of the Act. Such a notice is required where, inter alia, the planning authority decides not to comply with a recommendation of the Office and must contain reasons for the decision.

Material Amendments

The elected members, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions received, resolved to amend the draft Plan. The material alterations to the draft Plan were on public display from 18th May 2022 to 16th June 2022. The material alterations included a number of changes including but not limited to:

- amendments to the Wind Energy Policy, and
- amendments to the policy on access to national roads.



The Office made a submission on 16th June 2022 to the material alterations to the draft Plan containing four (4) recommendations and one (1) observation.

MA Recommendation 2 of the Office’s submission to the material alterations to the draft Plan required the planning authority to make the plan without MA 12.9. MA Recommendation 2 – Renewable Energy Targets and Wind Energy stated:

“Having regard to NPO 55 and the provisions of the Wind Energy Development Guidelines for Planning Authorities (2006), which recommend the implementation of the evidence-based approach to the determination of areas suitable to accommodate wind energy development through the sieve analysis approach, as was implemented in the Wind Energy Methodology (excluding the Areas for Further Assessment) carried out by the planning authority, and having regard to the conclusions of the planning authority’s Strategic Environmental Assessment Environmental Report and its Natura Impact Report, the planning authority is required to make the Plan without MA 12.9.”

The Chief Executive recommended not to adopt MA 12.9 concerning areas identified as ‘Open-to-Consideration’ for wind energy development, having regard to the SEA ER Addendum and to the National Climate Action Policy setting national targets for renewable energy for onshore wind. The Chief Executive advised that in the event the material amendment was adopted the lands that overlap the Special Area of Conservation (Site no.000365: the Killarney National Park, McGillicuddy Reeks and Caragh River Catchment SAC) should be omitted from the designation, having regard to the recommendations of the SEA ER Addendum.

The elected members subsequently did not remove MA 12.9 as recommended by the Chief Executive.



MA Recommendation 1 stated the following:

“Having regard to the requirements under section 2.5 of the section 28 Spatial Planning and National Roads Guidelines and to NSO 2 of the National Planning Framework, the planning authority is required to make the Plan without the following material amendments:

- MA 14.20
- MA 14.21

Section 2.5 of the Spatial Planning and National Roads Guidelines requires all development plans must implement the policy measure ‘to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development’. A key message of the Spatial Planning and National Roads Guidelines is that ‘Development plans must include policies which seek to maintain and protect the safety, capacity and efficiency of national roads and associated junctions, avoiding the creation of new accesses and the intensification of existing accesses to national roads where a speed limit greater than 50 kmh applies.’”

This is supported by NSO 2 of the NPF to maintain the strategic capacity and safety of the national roads network, with particular regard to inter-urban roads as part of enhanced regional accessibility. Section 2.6 of the Spatial Planning and National Roads Guidelines provides for exceptional circumstances to the section 2.5 requirements, where ‘planning authorities may identify stretches of national roads where a less restrictive approach may be applied’ as part of the plan review process ‘having consulted and taken on board the advice of [TII]’ and subject to specific criteria. Exceptional circumstances may be applied:

- (1) in the case of development of national and regional strategic importance which by their nature are most appropriately located outside of urban areas and where the locations



concerned have specific characteristics that make them particularly suitable for the developments proposed; and

- (2) to certain lightly-trafficked sections of national secondary routes serving structurally weak and remote communities where a balance has to be struck between the important transport functions of such road and supporting the social and economic development the areas.

The section 28(1A)(b) statement attached as Appendix 2 of the draft Plan, which stated ‘Chapter 14, Connectivity, specifically Section 14.4.1.1, Access onto National Roads and objectives KCDP 14-27, KCDP 14-28 and KCDP 14-29 sets out the Council’s intention to comply with these guidelines’ was not amended at material alterations stage, having regard to the requirements under 28(1B)(b). The Chief Executive’s report recommended that material amendments MA 14.20 and MA 14.21 be rejected in order to comply with Section 2.5 of the section 28 Guidelines *Spatial Planning and National Roads Guidelines* and to NSO 2 of the NPF. However, the elected members did not remove the amendment, as recommended by the Chief Executive, and made the Plan with MA 14.20 and 14.21, with amended text as follows:

MA 14.20:

- (a) Facilitate and support planning applications for economic job creation entities which require access onto the National Primary / Secondary Roads subject to compliance with Section 2.5 and 2.6 of the Guidelines, with early engagement with the TII. (b) Favourably consider new planning applications which require access onto National Primary / Secondary Roads for family members where there are existing entrances which is supported by a detailed Road Safety Audit.*

MA 14.21:

Support applications for family members on local private roads, with sufficient width, over 250m in length, with 3 or more residences, be treated as any other application on a public



road, entering from a national primary or secondary road which is supported by a detailed Road Safety Audit.

Adoption of Kerry County Development Plan 2022 – 2028

The elected members of Kerry County Council resolved to make the Kerry County Development Plan 2022 – 2028 at a Council Meeting on 4th July 2022.

Section 31AM(6) Notice

Subsequently you as Chief Executive sent a notice letter under section 31(AM)(6) of the Act dated 7th July 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with. The notice letter only addressed the recommendations of the Office made at material alterations stage. The section 31AM(6) notice letter stated that MA Recommendation 1 and MA Recommendation 2 had not been complied with, either in full or in part.

As set out in the section 31AM(6) Notice, the elected members gave reasons for not accepting the recommendation of both the OPR and the Chief Executive to remove MA 12.9, MA 14.20 and 14.21 and adding additional text to MA 14.20.

Section 31AM(8) Notice

On 29th July 2022, in accordance to Section 31AM(8) of the Act, the Office notified the Minister for Local Government and Planning that the Kerry County Development Plan 2022-2028 had not been made in a manner consistent with the recommendations of the Office, and that the reasons given by the elected members in not complying with the recommendations of the Office did not address the substantive issues raised. Subsequently, the Office in their notification letter, recommended that a proposed draft Direction be issued as follows:



(2) The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:

- a. Indicate, based on relevant and meaningful metrics, how the implementation of the Development Plan over its effective period will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource (in megawatts);
- b. Reinstate map 12.4 of Volume 1 and Map 5 of Volume 4 to that of the draft Plan (amended under MA 12.9.);
- c. Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to change the designation of all areas identified as 'Open-to-Consideration' to 'permitted in principle';
- d. Amend the reinstated map 12.4 of Volume 1 and Map 5 of Volume 4 to designate the following areas as 'permitted in principle':
 - (i) those areas of the county identified as 'areas for further assessment' in map 6.25 of the Wind Zoning Methodology (Appendix 6 of the Development Plan) and identified as of 'Low / Medium' or 'Medium' visual sensitivity in the Landscape Review (Appendix 7 of the Development Plan); and
 - (ii) those areas identified as practical resource constraints relating to the 1km buffer zone identified for each settlement in the Wind Zoning Methodology;
- e. Replace references to 'Open-to-Consideration' with 'Permitted in Principle' throughout Volume 1 and 4 of the Development Plan consistent with b. and c. above;
- f. Delete material amendments MA 14.20 and 14.21.



DECISION

Having reviewed all above reports and notification letters, I, as Minister, am of the opinion to issue the Direction to effect recommendation (2)(b-f) of the Office and in that regard, I refer you to the Statement of Reasons set out in the enclosed Draft Direction.

I am of the opinion not to include (2)(a) in the Draft Direction for the following reasons:

1. There have been a number of significant and critical developments in relation to climate change and renewable energy to which I have given due consideration to in the context of my decision, namely;
 - i. Through the Climate Action and Low Carbon Development (Amendment) Act 2021 and the National Development Plan 2021 – 2030, the Government has committed to a binding target to reduce greenhouse gas emissions by 51% and increase the share of electricity generated from renewable sources by up to 80% over the decade (2021 – 2030), and to achieving net-zero emissions no later than 2050.
 - ii. The publication of the Climate Action Plan 2021 and the associated Annex of Actions identifies precise and targeted measures to ensure that Ireland achieves a 51% reduction in overall greenhouse gas emissions by 2030 and also to reach net-zero emissions by no later than 2050. The delivery of Action 102 set out in the Annex of Actions, commits to delivering clear and specific outputs that are required in order for development plans to accurately and proportionately address targets at a local authority level.
 - iii. In particular, the commitment to publish a framework to set out targets for onshore renewable electricity development to inform spatial plans will be a significant output to enable the disaggregation of national targets to a scale that can be applied at local authority level. The timeline for the publication of the framework is Q4 2022. It is desirable that such outputs and targets would be available to inform county development plans and that potential for renewables would not be prescribed prematurely, particularly



given the life-cycle of development plans, which span six years. This will be applied to development plans when the framework to set regional and local targets for onshore renewable electricity development is available.

iv. The publication of the Climate Action and Low Carbon Development (Amendment) Act 2021 makes provision for local authorities to prepare statutory Climate Action Plans for their own administrative area within 12 months of the receipt of a request from the Minister for the Department of the Environment, Climate and Communications. A local Climate Action Plan is required to specify the mitigation measures and the adaptation measures to be adopted by the local authority as well as being consistent with the most recent approved climate action plan. Provision to align the Local Authority Climate Action Plans with the planning system is ultimately through Section 10(2)(n) of the Planning and Development Act 2000 (as amended), which requires that a development plan shall include objectives for:

- the promotion of sustainable settlement and transportation strategies in urban and rural areas including the promotion of measures to —
- reduce energy demand in response to the likelihood of increases in energy and other costs due to long-term decline in non-renewable resources,
- reduce anthropogenic greenhouse gas emissions and address the necessity of adaptation to climate change, taking account of the local authority climate action plan (within the meaning of section 14B of the Climate Action and Low Carbon Development Act 2015), where such a plan has been made for the area in question; in particular, having regard to location, layout and design of new development.



2. The developments highlighted in Section 1. above supersede those documents listed in Section 3¹ of the Section 28 *Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change* published in 2017. The developments highlighted above are also referenced in more recent Section 28 Guidelines, *Development Plans Guidelines for Planning Authorities*, issued in July 2022, which provide updated planning policies and objectives with regard to climate action, renewable energy and development plans. Chapter 8 and section 8.1.6 of the Development Plans Guidelines emphasise the role of Local Authority Renewable Energy Strategies to inform development plans. This will be applied to development plans when the framework to set regional and local targets for onshore renewable electricity development is available.

3. These developments will generate a nationally and regionally integrated capacity assessment for renewable energy that will facilitate co-ordination with adjoining authorities, provide metrics to inform the development of local targets and enable a broader range of potential measures to be applied, on a statutory basis. In this context, I consider that it would not be in accordance with proper planning and sustainable development, that the Kerry County Development Plan 2022-2028 address the issue at this stage in the manner recommended by the Office as this could preclude local scope for climate action, within the framework of updated national policy as outlined in section 1.

4. Furthermore, in response to the Russian invasion of Ukraine, the European Commission has proposed an immediate joint European action programme, REPowerEU, to terminate the dependence on imported fossil fuels from Russia before 2030 while ensuring more affordable, secure, and clean energy for Europe. Recommendations include that the *“...planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid and the related grid itself are considered as*

¹ The National Renewable Energy Action Plan 2010 (Irish Government submission to the European Commission); • The Government’s Strategy for Renewable Energy 2012 – 2020 (DCENR); • The Government’s White Paper on Energy Policy - Ireland’s Transition to a Low Carbon Energy Future 2015-2030 (DCENR); and • The Government’s National Mitigation Plan, July 2017 (DCCA).



being in the overriding public interest and in the interest of public safety and qualify for the most favourable procedure available in their planning and permitting procedures". On the acceleration of Europe's clean energy transition, Member States are to establish "go-to" areas for renewable energy development. Given the ongoing efforts to address both energy security and the Commission's proposal to terminate the dependence on imported fossil fuels, the inclusion of recommendation 2(a) of the Office in the Draft Direction could preclude such action, which will require the rapid deployment of renewables.

The National Energy Security Framework, published in April 2022, sets out the Government's response to Ireland's energy security needs in the context of the war in Ukraine. This Framework identifies a number of potential measures under the planning system that could better support the timely delivery of additional renewable energy sources and the required supporting infrastructure. One such measure identified is the provision of greater regulatory certainty, including timeframes, in relation to decarbonised generation which requires Government policy on relevant aspects of energy supply. These policies are currently being developed, one of which includes a national policy on renewables (solar and wind) as a specific energy type. Consequently, the detail of such a relevant and significant national renewable energy policy will need to be given effect through integration and implementation in the planning system, including the statutory plan-making process and is required to be completed to ensure the correct sequencing of policy formation at regional and local level can then be followed.

In light of the considerations and influencing factors set out above, I consider it is prudent and appropriate to allow for the scheduled and sequential preparation and publication of the relevant nationally and regionally integrated frameworks and plans to inform the Kerry County Development Plan 2022-2028, particularly where statutorily provided for, to give the required effect to determining targets and potential measures that can be proportionately and reasonably applied at local authority level.



Furthermore, the resource requirements and efforts related to the preparation of the local authority climate action plans should be prioritised to effectively inform the development plan, having had regard to the most up-to-date national policy and legislation; Ireland's energy security requirements, which include the need for the diversification and rapid deployment of renewables.

In respect of recommendations (2)(b-f) of the Office, a copy of this Draft Direction is attached to this letter.

It is my opinion that certain elements of the Development Plan as made have failed to implement a recommendation made to the planning authority by the Office, fail to set out an overall strategy for the proper planning and sustainable development of the area and are inconsistent with national and regional policy objectives specified in the NPF and RSES. The factors taken into account in forming this opinion are as follows:

- (i) The requirements of sections 10(1), 12(11), 12(18) and sections 28(1), 28(1A), and 28(1B) of the Act.

- (ii) The National Planning Framework including National Policy Objective 55 and National Strategic Outcome 2, which state the following:
 - NPO 55 - Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.
 - NSO 2 - Maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements.



- (iii) The Climate Action and Low Carbon (Amendment) Act (2021) which requires the Government to ‘pursue and achieve’ a national climate objective of a ‘climate resilient ... and climate-neutral economy’ (net-zero GHG emissions) by the end of 2050, and sets a binding interim target to reduce greenhouse gas emissions by 51% by 2030, to be achieved through, inter alia, annual climate action plans.
- (iv) The Climate Action Plan 2021 which sets a target of 80% for electricity demand generated from renewable sources by 2030, 8GW of which is anticipated to be delivered through onshore wind energy.
- (v) The Wind Energy Guidelines, issued by the Minister under section 28 of the Act, including the following requirements:
 - (a) requirement that the development plan ‘must achieve a reasonable balance between responding to overall Government Policy on renewable energy and enabling the wind energy resources of the planning authority’s area to be harnessed in a manner that is consistent with proper planning and sustainable development’ in order to provide for ‘the assessment of individual wind energy development proposals...within the context of a “plan-led” approach’.;
 - (b) requirement that development plan should identify ‘on development plan maps key areas ... where there is significant wind energy potential and where, subject to criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development will be acceptable in principle’; and
 - (c) ‘step-by-step guide to the analysis of areas suitable for wind energy by the planning authority’ (or sieve analysis) under section 3.5.
- (vi) The Spatial Planning and National Roads Guidelines, issued by the Minister under section 28 of the Act including:



- (a) The requirement to ‘implement the policy ... to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply ... for all categories of development’; and
 - (b) The provisions for exceptional circumstances to the aforementioned.
- (vii) 92/43/EEC The Habitats Directive;
- (viii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment;
- (ix) The Chief Executive’s reports on submissions on the draft Development Plan and material alterations to the draft Development Plan.

DRAFT DIRECTION

Accordingly, having considered the recommendation of the Office, I am issuing a draft direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Kerry County Council with regard to the Kerry County Development Plan 2022 – 2028.

The Planning Authority is hereby directed to take the following steps within the Development Plan as set out in the draft direction to the planning authority accompanying this notice.

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the Kerry County Development Plan 2022 – 2028 Plan referred to in this notice shall be taken not to have come into effect, been made or amended.

NEXT STEPS - PROCEDURAL REQUIREMENTS

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive, under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of



this notice, stating that the draft direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

In accordance with Section 31(9) of the Act, the report of the Chief Executive must:

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

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is



to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final direction.

Where the Office is of the opinion that a material amendment to the Draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

I wish to also remind you of the recent enactment of the Planning and Development, and Maritime and Valuations (Amendment) Act 2022 affecting Ministerial Directions on development plans and local area plans in the Planning and Development Act, 2000 (as amended) as advised in Circular NRUP 04/202, issued on 27th July 2022. Pending the consolidation of the Act on foot of the amendments, you are asked to take note of the procedural amendments that now apply to the section 31 process as it relates to development plans. For example, section 31(8) requires your report prepared under this subsection to also be furnished to the relevant Regional Assembly.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Laura Courtney, Planning Adviser at laura.courtney@housing.gov.ie.

Yours sincerely,

Peter Burke, T.D.,

Minister for Local Government and Planning



Copied to:

- Cathaoirleach, Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry V92 H7VT
- Mr. David Kelly, Director, Southern Regional Assembly, Assembly House, O'Connell Street, Waterford X91 F8PC
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWV4.